

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
Criminal Division – Felony Division

2012 JAN 18 P 3:12

UNITED STATES OF AMERICA

v.

SANTAE A. TRIBBLE

FILED

Criminal No. F-4160-78  
Judge Laura Cordero

**MOTION TO VACATE CONVICTION AND DISMISS INDICTMENT  
WITH PREJUDICE ON THE GROUNDS OF ACTUAL INNOCENCE  
UNDER THE INNOCENCE PROTECTION ACT**

Santae A. Tribble, through counsel, respectfully moves this Court to vacate his conviction for felony murder while armed and dismiss the indictment with prejudice under the District of Columbia Innocence Protection Act, D.C. Code § 22-4135, on the grounds of actual innocence. John McCormick was fatally shot on the front porch of his home near 3:00 a.m. on July 26, 1978, in the course of an armed robbery. The only eyewitness, Mr. McCormick's wife, saw only a man wearing a stocking mask. Police retrieved the mask nearby and sent it to the Federal Bureau of Investigation for laboratory analysis. FBI Special Agent James A. Hilverda microscopically "matched" a head hair in the stocking mask to Santae Tribble. So significant was the evidence that the hair in the stocking "exactly matches Mr. Tribble's in every microscopic characteristic," Assistant United States Attorney David Stanley argued to the jury, that the chance that the hair was left by someone other than Mr. Tribble was perhaps "one . . . in ten million."<sup>1</sup>

<sup>1</sup> Rebuttal closing argument, Tr. at 475 (emphasis added).

2012 JAN 18 PM 3:45

Mitochondrial DNA analysis of the hairs in the stocking mask now establishes to a scientific certainty that they could not have come from Mr. Tribble.<sup>2</sup> A terrible miscarriage of justice has been done. Mr. Tribble has spent his entire adult life, since he was a child of seventeen, in jail, in prison, or on parole for a crime he did not commit. He was asleep at the time of the murder in his mother's apartment in Seat Pleasant, Maryland, where he had spent the week helping to care for his aged grandfather, the Reverend Oliver Evans, while his mother was on vacation, as he and a half dozen unimpeached witnesses testified.

This new evidence, alone, is sufficient to warrant relief. But there is more. Mitochondrial DNA results also establish to a scientific certainty that none of the hairs in the stocking mask came from Cleveland Wright, Mr. Tribble's co-defendant who had been acquitted at a separate trial. He, too, is scientifically excluded as their donor. Mitotyping Report at 5. The government's entire theory of prosecution – that Mr. Tribble and Mr. Wright acted together to kill Mr. McCormick – is demolished.

Mr. Tribble requests an immediate hearing on this motion. He has waited thirty-three years for the truth to set him free. He should have to wait no longer.

## **I. PROCEDURAL HISTORY OF THIS MOTION**

On February 14, 2011, Mr. Tribble, through counsel, filed a motion for post-conviction DNA testing under the Innocence Protection Act. In it, he demonstrated that he met all of the statutory requirements for post-conviction DNA testing of the evidence seized in the investigation and prosecution that resulted in his conviction. His sworn affidavit of actual innocence was appended to the motion.

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<sup>2</sup> Test Report for Mitotyping Technologies Case No. 3137, Santae A. Tribble, appended as Exhibit 1.

The facts that gave rise to the motion stretch back more than three decades, to a time long before the discoveries that made DNA a forensic tool with “an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty,” *District Attorney’s Office for the Third Judicial District v. Osborne*, 129 S.Ct. 2308, 2311 (2009). But the motion would not have taken form were it not for a more recent event. When Donald Eugene Gates was exonerated by DNA testing in December 2009, having served 28 years for a felony murder he did not commit, Santae Tribble took notice.

In the wake of Mr. Gates’ exoneration, *The Washington Post* published an article entitled “Suspensions about FBI analysts growing.”<sup>3</sup> It reported that “the U.S. attorney’s office in the District has found more than 100 cases since the mid-1970s that need to be reviewed because of potentially falsified and inaccurate tests by FBI analysts.” *Id.* It explained that “[o]ne of the analysts accused of providing false testimony was Michael P. Malone, who testified in the Gates’s trial that one of Gates’s hairs scientifically matched a hair found on the body of [the victim]. DNA testing 28 years later proved that was not true.” *Id.* Two days later Mr. Tribble called undersigned counsel: He had a case like the one in the newspaper. Although he was innocent and had an alibi, he had been convicted of murder on the strength of FBI testimony about a hair.

Counsel commenced an extensive investigation to attempt to find the trial transcript, court records, relevant reports and physical evidence, and surviving witnesses. By miracles large and small, a copy of the transcript was located, the record was reconstructed, witnesses were contacted, and a glass slide prepared by the FBI was found at the Metropolitan Police

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<sup>3</sup> Keith Alexander, *The Washington Post*, C-01 (Sunday, Mar. 14, 2010).

Department evidence warehouse at Shannon Place. This slide contained the hair from the stocking mask that was used to convict Mr. Tribble of a crime he did not commit.

On February 28, 2011, this Court ordered the government to respond to Mr. Tribble's motion for post-conviction DNA testing. On June 29, 2011, the government filed its response. The United States agreed that Mr. Tribble was entitled to post-conviction testing under the Innocence Protection Act.

On August 31, 2011, this Court granted Mr. Tribble's motion for post-conviction DNA testing. Pursuant to this Court's order, and by agreement between Mr. Tribble and the United States Attorney's Office, on October 13, 2011, the hairs from the stocking mask were sent to Dr. Terry Melton at Mitotyping, LLC, an expert in obtaining DNA results from old hairs, for mitochondrial DNA testing. A saliva swab from Mr. Tribble was sent to the same lab for mitochondrial analysis and comparison to the DNA results from hairs in the mask used to shield the face of the murderer. Simultaneously, a saliva swab from Cleveland Wright was sent for mitochondrial DNA analysis to Orchid Cellmark, an established, accredited DNA laboratory.

The results of the scientific testing are now in. Mr. Tribble and Mr. Wright are both excluded as donors of the single hair used to convict Mr. Tribble of the murder of John McCormick, and excluded as donors of every other hair in the stocking mask abandoned by the perpetrator.

## **II. STATEMENT OF FACTS**

### **A. Introduction**

Santae Tribble was charged along with co-defendant Cleveland Wright with two separate crimes: the July 13, 1978, armed robbery and murder of William Horn and the July 26, 1978,

armed robbery and murder of John McCormick. Both victims were older white men. Both were killed by a single gun shot wound said to be fired from the same .32 caliber handgun. Both murders were committed in the dead of night on empty streets within several blocks of each other. Both murders were committed in the course of an armed robbery. Mr. Horn was accosted as he made his way from his car, which he had just parked, to his home after a night out. Mr. McCormick was killed on his front porch as he returned home after a night driving his taxi cab.

It was the government's theory that Mr. Tribble and Mr. Wright committed both crimes together, with Mr. Wright acting as the principal, and Mr. Tribble as the aider and abettor.<sup>4</sup> The cases were severed for trial and Mr. Wright was tried first. Although the juries heard similar purported admissions from government informants, and the same ballistics testimony, neither jury returned guilty verdicts for both murders. The difference was the hair. Mr. Wright's jury heard from FBI Special Agent Michael P. Malone (the same hair analyst who would later testify at Mr. Gates' trial) and by stipulation that the hair in the stocking mask abandoned near the scene of the McCormick murder could not have come from Mr. Wright. The jury acquitted Mr. Wright of all counts relating to the McCormick murder, although it convicted him of the Horn murder. Mr. Tribble's jury, in contrast, learned from Agent Hilverda that the hair in the stocking mask microscopically matched Mr. Tribble's hair in all characteristics, a phenomenon said to be very rare. After sending a note inquiring about the stocking left near the scene – that is, the stocking from which the telltale hair was recovered – the jury convicted Mr. Tribble of the armed robbery

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<sup>4</sup> Tr. 50 (government opening); Tr. 442 (government closing).

and felony murder of Mr. McCormick.<sup>5</sup> At the same time it acquitted Mr. Tribble of the Horn murder for which no such purportedly powerful scientific evidence was produced.

This motion focuses, as it must, on the murder of John McCormick, the only crime for which Mr. Tribble was convicted. But the hollowness of the government's case against both defendants for both crimes ought not to be ignored.

### **B. The Murder of John McCormick**

On July 26, 1978, a few minutes past 3:00 a.m., sixty-three-year-old John W. McCormick was slain on the front porch of his home at 1507 28th Place, S.E. Tr. 102-103. Mr. McCormick, a taxi cab driver, had returned home after working the night shift.<sup>6</sup> His wife of thirty-four years, Belva Jean McCormick, was awakened by the sound of a neighbor's dog barking. Tr. 103. She ran upstairs to the window from her basement bedroom. As she got closer, she heard her husband say, "I gave you all my money, I don't have any more." Tr. 104. She looked out the window and saw a man wearing a stocking mask. *Id.* The porch light was off but there was some illumination from street lights, filtered by the trees. Tr. 105. The man in the mask was about 5'7", her son's height.<sup>7</sup> Tr. 109-10. Fearful of turning on the light, she ran to the telephone in the dark and called for help. Tr. 105.

Officer Henry Schmitt received a radio assignment at 3:13 a.m. and arrived at the scene about a minute later. Tr. 162-163. He saw no one in the street. He testified that "[t]he front

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<sup>5</sup> The jury returned a verdict of not guilty on first-degree premeditated murder. *Tribble v. United States*, 447 A.2d 766, n.1 (D.C. 1982). The armed robbery merged into the felony murder conviction. *Id.* at 767-68.

<sup>6</sup> According to his wife's testimony, Mr. McCormick had recently learned that he had diabetes and as a result no longer worked until morning. For the past three weeks, since the diagnosis, he had returned home between 2:30 and 3:00 a.m. Tr. 102-103.

<sup>7</sup> The testimony was undisputed that Santae Tribble was at the time of the offense "a good four, four and a half inches to five inches" taller than 5'7". Tr. 364.

porch light was off.” Tr. 164. Mr. McCormick was on the ground, wounded and unconscious. Mrs. McCormick was leaning out of her front door, pointing to her husband. Tr. 164.

Mr. McCormick had suffered a single fatal gunshot wound to his chest. Tr. 280. His pockets had been turned out. Tr. 164. The taxi cab, which he owned, was parked on the opposite side of the one-way street, about four cars down from his house. Tr. 165. All four doors were locked. Tr. 167. According to his wife, Mr. McCormick ordinarily carried only a small amount of money on his person. Tr. 107. He would lock the rest of his money – the proceeds from his night’s work – in the trunk of his cab. Later, after his death, the trunk was opened and Mr. McCormick’s money was found inside, undisturbed. *Id.*

There were no witnesses to the fatal encounter on the porch other than Mrs. McCormick. She saw only one person, a man wearing a stocking over his face. She saw no one else either on the porch or in the street. Tr. 106. She could make no identification.

**C. The FBI “Matches” a Hair from the Stocking Mask Abandoned by the Perpetrator to Mr. Tribble**

Nearby was physical evidence that would purport to link Mr. Tribble to the crime. Canine Officer Milton C. Snead and his German shepherd arrived at 1507 28th Place, S.E. at 3:30 a.m. Tr. 113. The police dog had been trained to pick up and track the “freshest” human scent. Tr. 114. Officer Snead took his dog into the alley next to the McCormick home, which appeared to him to be “a likely escape route.” *Id.* Across from the alley, facing Pennsylvania Avenue was a fire station. Tr. 113-14. The dog picked up a scent and pulled Officer Snead west to 28th Street, then left on the 1500 block of 28th Street. Tr. 115-16. The dog stopped in front of 1526 28th Street where Officer Snead, shining his flashlight, found a stocking on the sidewalk. Tr. 116. At Santae Tribble’s trial Officer Snead identified Exhibit 5 as the stocking that he had found near the scene with the aid of his dog. Tr. 118.

The defense and the government entered into the following stipulation at trial regarding the custody of the stocking:

The stocking located by Officer Milton Snead on the sidewalk in front of 1526 28th Street, Southeast, on July 26, 1978, was transmitted in an unaltered condition to the FBI Laboratory where [it was] examined by Agent James Hilverda.<sup>8</sup>

Special Agent James Hilverda was the first witness called by the government in its prosecution of Santae Tribble. He had been an analyst in the FBI laboratory's Microscopic Analysis Unit for five years. After earning an undergraduate degree in biological sciences at Utah State University and a Masters of Science degree from Idaho University, he completed a year long apprenticeship under the FBI lab's unit chief. Tr. 67. He had conducted "thousands, probably tens of thousands" of examinations on his own,<sup>9</sup> after his apprenticeship, and had testified as an expert witness in about 85 cases. *Id.* He explained his technique:

The actual comparison is done through a sequence of magnifications on the microscope. We look at low power magnifications and determine what type of hair it is, whether it is human or animal, determine what race of the hair it came from. There are about 15 different characteristics which I will utilize and analyze each hair for those characteristics, and then compare them to see if these characteristics match up with those in known samples.

Tr. 68.

Agent Hilverda testified that he could draw one of three conclusions following an examination: that the hairs "positively" did not come from the same individual; that no

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<sup>8</sup> Stipulation at ¶ 5, dated January 1, 1980, Record on Appeal at 118; Tr. 119.

<sup>9</sup> This estimate of the number of examinations Hilverda conducted was likely false. In *United States v. Massey*, 594 F.2d 676, 679 (8th Cir. 1979), a roughly contemporaneous case, Agent Hilverda testified that he had conducted "more than 2000" examinations. For the number to increase within a matter of a year or two to "probably tens of thousands," Agent Hilverda would have had to conduct examinations with such lightning speed and such single-mindedness as to strain believability.



conclusion could be reached; or that the hairs “microscopically match in all characteristics,” which meant they could have come from the same individual or another individual with the same characteristics. Tr. 70. This last conclusion reflected a very high likelihood that matching hairs came from the same source. Agent Hilverda explained:

Q. Is it possible that two individuals could have hairs with the same characteristics?

A. It is possible, but my personal experience, I rarely have seen it. Only on very rare occasions have I seen hairs of two individuals that show the same characteristics. Usually when we find hairs that we cannot distinguish from two individuals, it is due to the fact that the hairs are either so dark that you cannot see sufficient characteristics, or they are too light that they do not have very many characteristic[s] to examine. So you cannot make a real good analysis in that manner. But there is a potential even with sufficient characteristics to once in a while to see hairs that you cannot distinguish.

Q. And is it because of that small possibility that two hairs can be from different people that you never give absolutely positive opinion that two hairs, in fact, did come from the same person.

A. That is correct.

Tr. 70-71 (emphasis added).<sup>10</sup>

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<sup>10</sup> Special Agent Michael Malone, at Cleveland Wright’s trial, testified in similar fashion to the relevance of a hair match:

Q. If you compare them and they microscopically match in all characteristics, could you say they could have come from the same person?

A. That’s correct.

Q. Have you ever seen two hairs from two different people that microscopically match?

A. Well, it is possible in the thousands of hair examples I have done, it is very, very rare to find hairs from two different people that exhibit the same microscopic characteristics. It is possible, but as I said, very rare.

Agent Hilverda examined the stocking and found a number of hairs, one that was suitable for comparison and others that were not. The prosecutor elicited the source of the hairs:

Q. Were you able to determine what portion of the body those hairs came from?

A. Yes. They were all head hairs, and the one that was suitable for comparison purposes was black in color and was of Negroid origin.

Tr. 72.

Agent Hilverda compared the hair that was suitable for comparison to sample head hairs from Cleveland Wright and from John McCormick and concluded that it could not have come from either source. Tr. 72-73. With respect to the decedent, he noted that they were "dissimilar in characteristics and from different races." Tr. 73. When he compared the hair from the stocking to a sample of Santae Tribble's hair, they "matched." He explained:

I found that these hairs – the hairs that I removed from the stocking matched in all microscopic characteristics with the head hair samples submitted to me from Santae Tribble. Therefore, I would say that this hair could have originated from Santae Tribble.

Q. Is there any microscopic characteristics [sic] of the known hair that did not match?

A. No. The hair that I aligned with Santae Tribble matched in all microscopic characteristics, all characteristics were the same.

Q. And were there a large number of characteristics which were the same or –

A. All the characteristics were the same and there was a sufficient number of characteristics to allow me to do my examinations.

Tr. 73-74.

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Q. Is it because of that possibility you will never say more than the hair could have come from the particular person.

A. That's correct. Yes.

Wright Tr. 136.

On cross examination, Agent Hilverda acknowledged that a hair is not like a fingerprint.

Tr. 75. Although he admitted that it was not a basis for a positive identification, he testified:

I think you can identify individuals, say, as to race, you can an [sic] indication that it came from an individual because it matches in all characteristics and I would say that when I have—in my experience that I feel when I have made this type of examination, it is likely that it came from the individual which I depicted it as coming from.

Tr. 75-76 (emphasis added).

**D. The Significance of the Hair Evidence at Trial: The Prosecutor's Reckless Closing Argument and the Jury's Note**

The prosecutor took full, even reckless, advantage of Agent Hilverda's testimony in closing argument, emphasizing that only the FBI's caution precluded him from testifying that the hair found in the stocking was positively Santae Tribble's. Assistant United States Attorney David Stanley argued:

Mrs. McCormick said at least one of the robbers, the only one that she saw, was wearing a stocking mask. A block from where that homicide occurred, more or less, through the alley and around the corner on a fresh trail found by a trained canine dog, was found what, a stocking mask. In that stocking mask was found what, a hair.

Now whose hair was that? Well it was compared by the FBI laboratory and they can say for one thing, it wasn't Cleveland Wright's hair. They can say that that hair matched in every microscopic characteristic, the hair of Santae Tribble. Now for scientific reasons, which were explained, they cannot say positively that that is Santae Tribble's hair because on rare occasions they have seen hairs from two different people that matched. But usually that is the case where there have been few characteristics present. Now Agent Hilverda told you that on these hairs, the known hairs of Santae Tribble and the hair found in the stocking, there were plenty of characteristics present, not that situation at all. But because the FBI is cautious, he cannot positively say that that is Santae Tribble's hair.

Tr. 452.

Mr. Tribble's attorney Vito Potenza attempted to persuade the jury that the hair match proved nothing more than that it "could be" Mr. Tribble's hair. But the government, on rebuttal, shredded the argument, emphasizing the scientific nature of the testimony and concluding that there was only a one in ten million chance that the hair was not Mr. Tribble's. Indeed, the prosecutor insisted that if the jury listened to what Agent Hilverda "really said" it would realize that he said that it was Santae Tribble's hair that was found in the stocking. Tr. 476. Defense counsel argued:

Well what did Special Agent Hilverda say, microscopic analysis. Throwing the large terms away, what did he say? Could be. He looked at one hair, he looked at Santae Tribble's hair and said, could be.

Tr. 460 (emphasis added).

AUSA Stanley rebutted:

[T]he dog found a stocking with a hair which not only could be Santae Tribble's, it exactly matches Santae Tribble's in every microscopic characteristic. And Mr. Potenza says throw away all the scientific terms and reduce it to could be. Scientific terms are important. He told you how he compares hairs with powerful microscopes. It is not just the color or wave. He could reject Cleveland Wright's hair immediately; it wasn't Cleveland Wright's hair in that stocking. But he couldn't reject Santae Tribble's because it was exactly the same. And the only reason he said could be is because there is one chance, perhaps for all we know, in ten million that it could [be] someone else's hair. But what kind of coincidence is that?

\*\*\* The hair is a great deal more than could be. And if you listened to Agent Hilverda and what he really said, the hair exactly matched Santae Tribble's hair, found in the stocking.

Tr. 475-76 (emphasis added).

This argument was false and misleading even within the context of the conventional scientific understanding of the era in which it was given, before the advent of DNA testing

exposed hair microscopy in its accusatory mode as “lethal nonsense.”<sup>11</sup> As the National Academy of Sciences reported, “No scientifically accepted statistics exist about the frequency with which particular characteristics of hair are distributed in the population.”<sup>12</sup> Accordingly, “[a]ll analyst testimony . . . stating that a crime scene hair was ‘highly likely’ to have come, ‘very probably’ came, or did come from the defendant violates the basic scientific criterion that expressions of probability must be supported by data.”<sup>13</sup> Because there is no data, there is no basis for any statistical expression of the probability of the hair match. FBI Trace Evidence Unit Chief Cary Oien has acknowledged that “[g]iven that useful statistical data are not generated . . . one must accept that the answer to the question, what is the probability of a coincidental match between the questioned hair and the known sample? is we do not know.”<sup>14</sup>

Mr. Tribble’s jury asked a single question during its deliberations: “Which stocking was found at end of alley on 28th St [Government Exhibit]18 or 5[?]”<sup>15</sup> Government Exhibit 18 was a stocking that the police had retrieved from a dresser drawer in Cleveland Wright’s bedroom.<sup>16</sup> Tr. 288-89. Government Exhibit 5 was the stocking found near the scene of the McCormick murder from which Agent Hilverda had removed a hair that he claimed microscopically matched

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<sup>11</sup> Barry Scheck, Peter Neufeld, Jim Dwyer, *ACTUAL INNOCENCE*, at 214 (2003).

<sup>12</sup> National Research Council, National Academy of Sciences, *STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD*, at 160-61(2009). *See also* Brandon L. Garrett and Peter J. Neufeld, *Invalid Forensic Science Testimony and Wrongful Conviction*, 95 Va. L. R. 1, 47 (2009) (“[T]here is not and never had been any statistical basis for hair comparison.”).

<sup>13</sup> Garrett and Neufeld at 12.

<sup>14</sup> Cary T. Oien, *Forensic Hair Comparison: Background Information for Interpretation*, 11 Forensic Sci. 1, 14 (Summer 2009).

<sup>15</sup> *Santae Tribble v. United States*, Appeal No. 80-628, Record at 124.

<sup>16</sup> The FBI analyzed the two exhibits and concluded that the stockings were not similar. Report of the FBI (Feb. 16, 1979).

Santae Tribble's. Soon after<sup>17</sup> being instructed by Judge Bacon that the stocking found at the end of the alley was Exhibit 5,<sup>18</sup> the jury returned its verdict convicting Mr. Tribble of the armed robbery and felony murder of John McCormick.

The power of scientific testimony to overawe and mislead a jury is well-recognized.<sup>19</sup> Where that scientific testimony was not only relied upon, but grossly exaggerated by the prosecution, and where it was the focus of the deliberating jury's sole note, and where the guilty verdict came hard on the heels of the trial judge's response, the impact of spurious scientific testimony cannot be denied. No matter how weak the remainder of the government's case, or how powerful Mr. Tribble's proof that he was elsewhere at the time of the crime, he could not overcome the "scientific" evidence from our nation's foremost forensic laboratory that seemed to place him on the scene, or the argument of the United States that the odds against his presence were infinitesimally small. That the government's other evidence was both weak and false and the alibi evidence, that the false scientific evidence overbore, was both strong and true makes the fact of Mr. Tribble's wrongful conviction indisputable.

**E. The Government's Remaining Evidence at Trial – Without the Hair Evidence Now Known to Exonerate Mr. Tribble – Was Insufficient to Support a Murder Conviction**

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<sup>17</sup> According to a notation on the court docket made by the clerk, the verdict was received at 5:16 p.m. on January 21, 1981. The clerk did not note the time of the jury's question or Judge Bacon's response. However, Vito Potenza, counsel for Mr. Tribble, made the following notation on the PDS case jacket: "4:36 note re mask." Affidavit of Vito T. Potenza at 2, appended as Exhibit 2.

<sup>18</sup> Record on Appeal at 124.

<sup>19</sup> See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 595 (1993) ("Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it.") (citation omitted); *United States v. Frazier*, 387 F.3d 1244, 1263 (11th Cir. 2004) ("Simply put, expert testimony may be assigned talismanic significance in the eyes of lay jurors, and, therefore, the district courts must take care to weigh the value of such evidence against its potential to mislead or confuse.").

## 1. Bobby Jean Phillips and the Purported Admission

Bobby Jean Phillips, a woman known as “B.J.,” and also by the surnames Lockett and Thomas, and now Bess, with an ambiguous relation to the police,<sup>20</sup> and a casual relationship to the truth,<sup>21</sup> had been acquainted with Mr. Tribble for just a short time during the summer of 1978. Tr. 183. She was the source of the only other evidence purporting to link Mr. Tribble to the murder of John McCormick: she informed the police of his involvement in the sale of Cleveland Wright’s gun, a gun that, like hundreds of thousands of other .32 caliber handguns, could have been the murder weapon (discussed *infra*), and she claimed that Santae Tribble admitted a role in the slaying of John McCormick to her. But the “admission” she ascribed to Mr. Tribble, first recounted by Ms. Phillips under circumstances that belied its trustworthiness, was impossible to reconcile with the undisputed facts, as even a prosecutor then assigned to the case acknowledged to defense counsel in a discovery conference.

### a. B.J. Phillips’ testimony makes no sense and is contradicted by the known facts

According to her trial testimony, Mr. Tribble admitted to Ms. Phillips that he and Mr. Wright “caught” a cab at Minnesota Avenue and Pennsylvania Avenue, S.E. They rode the cab to 28th Street – a distance of only a few blocks – where Mr. Wright shot the cab driver because he “turned.” Ms. Phillips’ testimony, elicited by AUSA Stanley, was as follows:

Well he [Mr. Tribble] mentioned something – he was sort of running off the mouth, said something about he had caught a cab down by Pennsylvania and Minnesota and they went up near the fireplace – firehouse up near 28th Street, something like that.

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<sup>20</sup> The Court of Appeals stated: “Mrs. Phillips had several contacts with investigating police officers and helped them in gathering evidence relating to the homicide.” *Tribble v. United States*, 447 A.2d at 777. It also noted that defense counsel “suggested that she had cooperated with the police only because she had been threatened with obstruction of justice.” *Id.*

<sup>21</sup> See *infra* n. 35 and accompanying text.

... Q. And who did he say they was [sic] that caught the cab and went to the firehouse?

A. He said him and Cleve had caught a cab near Penn and Minnesota.

... Q. And did he say what, if anything, occurred near the firehouse?

A. He mentioned about the man turned or something – like I said, I can't remember back that far because I have been trying to block it out of my mind.

Q. When he said the man turned, did he say what happened when the man turned?

A. When the man turned, I think that is when he said he shot the dude or something and then he duffed.<sup>22</sup>

Q. Did he say who shot the dude?

A. He said Cleve.

Tr. 175-76.

On cross examination, Ms. Phillips repeated her claim that Mr. Tribble had admitted “catching the cab” and driving in it a few blocks to 28th Street:

Q. ... [Santae Tribble] told you about catching a cab up on Minnesota or Pennsylvania Avenue someplace?

A. Like I said, he wasn't himself. He just mentioned something about catching a cab at Penn and Minnesota.

Q. And did he tell you where the shooting took place, did it take place in the cab?

A. He didn't say, because like I said at first, if you recall, the phone rang.<sup>23</sup>

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<sup>22</sup> According to Ms. Phillips, “Duffed means to run or to get lost.” Tr. 176.

<sup>23</sup> In fact, Ms. Phillips testified on direct that a ringing telephone had interrupted an earlier purported confessional conversation regarding the Horn murder. Tr. 174.



Q. You just remember him saying something about a cab on 28 – catching a cab towards 28th Place, is that what you are saying he said to you?

A. I just remember briefly by him stating and saying about they caught a cab around Pennsylvania and Minnesota and went to 28th Street near the firehouse, that is all I recall.

Tr. 185.

Mrs. McCormick's observation of one assailant and the fact that the murder took place on the front porch, with her husband's locked cab parked nearby with cash still in the trunk, and the single stocking discarded along a likely escape route all suggested a crime of opportunity: A lone masked gunman came upon John McCormick on his front porch at 3:10 a.m., as he was about to enter his home, robbed and killed him, then fled, discarding his stocking mask as he made his escape.

*The Washington Post* and *The Washington Star* both reported on Mr. McCormick's murder the very next day. Both papers reflected this version of the crime. *The Post* attributed the account to the police, reporting:

Police said that John McCormick, of 1507 28th Place SE, a driver with Diamond Cab Co., had parked his taxi about a block away from his home at about 3:10 a.m. and was approached by an assailant as McCormick reached his front porch.

"Taxi Driver, 63, Slain in Holdup on Way Home," *The Washington Post*, Section C (July 27, 1978). *The Star* attributed a similar account to a family member. It wrote:

A member of the family said that McCormick had parked his Diamond cab shortly after 3 a.m. on the corner of Pennsylvania Avenue and 28th Place SE, and had started walking towards his porch on 28th Place. Before he reached the door, someone apparently approached him with a gun.

Brian Murchison, "Bullet Ends a Love of Hacking," *The Washington Star*, Section B-1 (July 27, 1978).

Detective Kilcullen also recounted this course of events to the grand jury:

Mr. McCormick was a cab driver for Diamond Cab Company. He finished his work at about 3:00 in the morning and drove to 28th and Pennsylvania Avenue, S.E., and parked right across the street from the fire house, which is located right over there.

Then he walked a short distance to his home, which is located on 28th Street, S.E. As he was on his front porch of his house, a single robber or two robbers – we are not sure how many – at the time we were not sure – robbed Mr. McCormick of an undetermined amount of money on the porch of his home and then shot him and fled.<sup>24</sup>

Instead of a crime of opportunity by a gunman who approached Mr. McCormick on his porch, Ms. Phillips' account of Mr. Tribble's "admission" would have had Mr. McCormick, an experienced cab driver at the end of his shift, stop for two Black youths – Santae Tribble and Cleveland Wright – just blocks from his home and take them to his home. When would his passengers/would-be assailants have donned stocking masks?<sup>25</sup> Why would they exit the cab rather than rob the driver within its relative privacy and safety? When did Mr. McCormick place his night's proceeds in the trunk? Why would they wait for him to lock the cab, or lock it themselves? Why would they have allowed Mr. McCormick to reach the threshold of his home – having walked the length of four cars, crossed the street, and climbed onto his porch – before robbing and shooting him? Why was only one stocking discarded?

b. The government acknowledged the story made no sense

At a pretrial discovery conference, defense attorney Vito Potenza asked the Assistant United States Attorney then assigned to the case, James Hanny, for the manifest for the cab.

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<sup>24</sup> *United States of America v. Cleveland Wright and Santae Tribble*, Grand Jury Testimony of Thomas J. Kilcullen, Tr. 6 (Aug. 31, 1978).

<sup>25</sup> If they had been masked on the street Mr. McCormick would not have stopped to pick them up. If they had not been masked, he would have already seen their faces, making masks superfluous. If they wanted to escape observation by all but their victim, would they have followed him – masked or unmasked – to his porch rather than kill him in the cab?

Presumably, Mr. McCormick would have recorded the location at which he picked up his last fare. If he had in fact picked up two men on Minnesota and Pennsylvania Avenues, the manifest would have said so. Mr. Potenza recorded the prosecutor's assessment of the truth of B.J.

Phillips' story in response to his request:

With respect to the cab manifest he said he was checking to see what could be done. He believes that BJ's statement about the cab from Minnesota to Pennsylvania is bullshit and that it is not the way it happened and that McCormick shooting was merely a crime of opportunity.<sup>26</sup>

No manifest was ever provided. And yet, notwithstanding the unreliability of Ms. Phillips' account, the government sponsored her testimony as if it were true, aided, as it was, by the microscopic match of a head hair in the stocking mask to Mr. Tribble that seemed to place him on the scene.<sup>27</sup>

Defense counsel argued in closing that it could not be true:

[O]ne, why would anybody take a cab that far, but two, why would a cab driver in the middle of the night pick anybody up to go three blocks. And then if he picked them up in anticipating going further, why would he pull in front of his house? That incident in front of John McCormick's house was a crime of opportunity by someone on the street, not Santae Tribble, but whoever was on the street that night. It didn't happen at all the way B.J. Phillips stated.

The Government's evidence doesn't even support that at all. Didn't the first officer on the scene tell you that Mr. McCormick's cab was locked, it was locked. That doesn't fit that somebody was in the cab and fled.

Tr. 468.

c. B.J. Phillips' ambiguous relation to the police

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<sup>26</sup> Memorandum of Vito Potenza to Tribble File; Subject: Discovery Conference with Hann[]y on August 20 (August 21, 1979) (emphasis added). See Affidavit of Vito T. Potenza at 2.

<sup>27</sup> In closing argument AUSA Stanley acknowledged problems with Ms. Phillips' version of events, but urged the jury to look to the hair in the stocking mask for corroboration. Tr. 450-52.

Ms. Phillips described her relationship with the police to the grand jury in response to questions from one or more of the grand jurors:

Q. Ms. Phillips how did you first get involved in this? Did you just volunteer information: How did you ever get involved?

A. [Officer] Meehan is a good friend. I have been knowing him for some time. He asked me if I knew anything or if anything passed through would I let him know. My name was never supposed to have come up, but it did anyway.

Q. "Anything that passed through;" what do you mean?

A. Well, a lot of the detectives know that the people I deal with that I might pick up on something or whatever.

Q. Are you an informant?

A. No, not really.<sup>28</sup>

Ms. Phillips gave her "friend" Officer Meehan an expended .32 caliber shell casing from a gun her roommate had purchased from Mr. Wright, with Mr. Tribble's assistance, during the first week of August 1978. Tr. 246. Officer Meehan testified that he had driven through Ms. Phillips' street working the midnight tour on August 2, 1978, and she had "volunteered" the shell casing. Tr. 246-47. He gave the shell casing to investigators and arranged an introduction of Ms. Phillips to Detective Leadmon. Tr. 248. Detective Kilcullen, who was working on the Horn and McCormick investigations, described his interest in Ms. Phillips (whom he refers to as "Leadmon's girl"), in the gun, and in working with Ms. Phillips "relative to the suspects making any statements":

Concerning the 32 caliber revolver with serial number 42752 as reported by Le[a]dmon's girl . . . [m]oney has been procured and given to 6D people for use in obtaining this weapon. . . . Much work continues with Le[a]dmon and his girl relative to the suspects

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<sup>28</sup> Grand jury testimony of Bobby J. Phillips, Tr. at 22 (Sept. 14, 1978).

making any statements and also to a purchase of or taking in some way of the gun[.]<sup>29</sup>

The gun disappeared before the detectives could examine it; according to Ms. Phillips “it got legs and vanished.” Tr. 198. Ms. Phillips soon obliged Detective Kilcullen with the suspect statements he sought. Defense counsel suggested that her false recollections of admissions that were never made were prompted by police threats to bring obstruction of justice charges against her for the disappearance of the gun if she did not cooperate. Tr. 198-99.

d. B.J. Phillips gives two contradictory statements

On August 13, 1978, at 3:00 a.m., at the homicide office of MPD, Ms. Phillips gave Detective Kilcullen a written statement in which she implicated Mr. Tribble with a purported admission to the Horn offense, thus providing the detective with one of the suspect statements he had sought. At the same time, she denied that she knew of any other offenses, answering “no” to the question, “Do you know of any other crimes by Cleve or Santae?” Tr. 205. According to Ms. Phillips, Mr. Tribble had told her with respect to the killing of Mr. Horn that “Cleve had gone on and knocked on an apartment building door and a man came and Cleve shot the man.”<sup>30</sup> Just as with her later statement regarding the McCormick murder, this account bore no relation to the undisputed facts. Mr. Horn had not come to the door and been shot. Instead, he had been shot in the street, walking home from where he had parked his car, as the unimpeached witnesses and physical evidence established. See Tr. 79-80 (testimony MPD Officer Eugene Farkas); Tr. 86-88 (testimony of Jesse James Yeager); Tr. 91-94 (testimony of John W. Courtney).

Five days later, on August 18, 1978, Ms. Phillips was again brought to Homicide to be questioned by detectives. This time she told them of Mr. Tribble’s purported admission

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<sup>29</sup> MPD Report of Investigation (Aug. 9, 1978) (emphasis added).

<sup>30</sup> Statement of Bobby Jean Thomas (Lockett and Phillips) (MPD PD 119) (Aug. 13, 1978).

regarding the McCormick murder about catching a cab at Minnesota and Pennsylvania Avenues, notwithstanding her previous statement that she knew of no other crimes with which he or Cleveland Wright were supposedly involved. Tr. 205.

e. The purported admissions were never made

Mr. Tribble flatly denied that he had ever made any statements to B.J. Phillips regarding any murder, as he had participated in none. Tr. 410-11. Cleveland Wright, who was not available to Mr. Tribble as a witness at trial, swears in his affidavit that he is completely innocent of both crimes and that he believes Mr. Tribble is as well.<sup>31</sup> He attests:

In 1978 I was twenty years old. Santae Tribble was my good friend. We'd grown up together. Santae and I were charged with two murders. I didn't have anything to do with either murder. I never killed anyone in my life. I don't believe that Santae had anything to do with them either.

I never made any statements to anyone that I killed anyone or that Santae killed anyone. I never heard Santae say that he killed anyone.

The Court of Appeals observed that:

[Mr. Tribble's counsel] was able to challenge Mrs. Phillips' credibility in many instances. He impeached her with prior inconsistent statements made to the police and to the grand jury and further suggested that she cooperated with the police only because she had been threatened with obstruction of justice. Finally, Mrs. Philips responded on several occasions that she could not remember a certain date or time of day because she was "trying to block all of that junk out of [her] mind," suggesting that any memory lapse was deliberate rather than a result only of the passage of time.

*Tribble v. United States*, 447 A.2d at 772. Another explanation for her lack of memory regarding the details of the admissions is that she had no real memory of them because they had never been made.

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<sup>31</sup> Affidavit of Cleveland Wright, appended as Exhibit 3.

Ms. Phillips, now known as “Ms. Bess,” was entirely uncooperative with attempts to interview her for this motion. She told Mr. Tribble’s investigator that she had “amnesia” with respect to these events.<sup>32</sup>

## 2. Ballistics

The government also attempted to link Mr. Tribble and Mr. Wright to the crimes through their conceded connection to a handgun and bullets or shell casings of the same or similar type as were used to kill Mr. Horn and Mr. McCormick. But all that could be said of this evidence was that the .32 caliber F.I. Industries gun they sold was one of hundreds of thousands of .32 caliber handguns that could have been used in the crimes. As AUSA Stanley acknowledged in opening statement, “[I]t is impossible to say with certainty what kind of .32 caliber revolver fired those . . . bullets [that killed the decedents].” Tr. 60 (emphasis added).

Mr. Tribble admitted his involvement in the sale of Cleveland Wright’s gun to Brenda McLean.<sup>33</sup> Tr. 415-17. Ms. McLean, who lived with B.J. Phillips at 2907 Fairlawn, S.E., testified that Mr. Tribble and Mr. Wright sold a gun to her for \$60 because they wanted “to get into a crap game.”<sup>34</sup> Tr. 210; 214. Before concluding the sale, Ms. McLean and Mr. Tribble walked down the bike path behind the apartment where Mr. Tribble fired at a soda can, demonstrating that the gun worked. Tr. 214-16. Back at the apartment, Ms. Phillips and Brenda McLean’s friend heard the pop of a gun. Tr. 77, 241. Later, Ms. Phillips took shell casings,

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<sup>32</sup> Affidavit of Patricia Slater, appended as Exhibit 4.

<sup>33</sup> There was no dispute that the weapon had been Mr. Wright’s. The government introduced a photograph of Mr. Wright holding the gun that had been recovered by police from Mr. Wright’s bureau. Tr. 288; 440.

<sup>34</sup> Mr. Tribble did shoot dice as a young man. He had no prior criminal convictions or juvenile adjudications of any sort, but he had twice paid ten dollar fines for disorderly, craps. Presentence report at 3.

either from an ash tray or from the gun itself,<sup>35</sup> and gave them to Metropolitan Police Officer Meehan. Tr. 179. Still later, she read the serial number of the gun to Detective Leadmon,<sup>36</sup> who determined that the weapon was a .32 caliber revolver manufactured by F.I. Industries under the brand name Kimel. Tr. 258. But before police could examine the gun, it disappeared from Ms. McLean's aunt's house. Tr. 196, 220, 229.

Officer Joseph Masson, Jr., of the Metropolitan Police Department's Firearms Examination Section, examined the slug recovered at autopsy from Mr. McCormick and the slug recovered at autopsy from Mr. Horn. He concluded that both were fired from the same weapon. Tr. 298. He further concluded that they could have been fired by .32 caliber revolvers manufactured by F.I. Industries,<sup>37</sup> Harrington and Richardson, and Hopkins and Allen. Tr. 299. He testified that these three manufacturers made half of all .32 caliber revolvers that were produced. Tr. 306. Without examining the weapon itself, "it was impossible to say which of the three" manufacturers made the gun from which the slugs were fired, although the officer opined that the lands and grooves were more consistent with F.I. Industries. He acknowledged, however, that he could not rule out either of the other manufacturers. Tr. 307.

Officer Masson testified that the slugs from the decedent could not be connected to the shell casings from the gun sold to Ms. McLean:

Q. You cannot put those two separate things together, the two slugs [recovered at autopsy] and the two casings, is that correct?

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<sup>35</sup> The testimony of Ms. Phillips and Ms. McLean differed in numerous respects regarding the circumstances of the purchase and subsequent disappearance of the gun. *Compare, e.g.*, Tr. 187, 189 and Tr. 223, 226.

<sup>36</sup> Ms. Phillips falsely told Detective Leadmon that she was reading a number she had written down on a card. She admitted at trial that she actually was holding the gun in her hand during the call. Tr. 180.

<sup>37</sup> A representative from F.I. Industries testified that between 50,000 and 60,000 guns of the same model as was sold to Ms. McLean were then in circulation. Tr. 272-73.



A. That is correct, sir.

Q. You cannot say that they were fired from the same gun?

A. No, sir, I cannot.

Tr. 304.

Officer Masson also compared .32 caliber ammunition and expended shells found in Mr. Tribble's mother's home and at Mr. Wright's home to the slugs recovered at autopsy. No conclusion could be drawn other than that all were manufactured by Remington Peters, which, as one of two major manufacturers, made millions of such rounds each year. Tr. 301. He testified:

Q. And there is absolutely no connection you can draw between the slugs recovered and the casings, is that correct: Other than to say the Remington and Peters ammunition, as far as the weapon involved, you cannot connect the weapon that fired the slugs to the weapon in which the casings were fired?

A. That is correct.

Tr. 308.

\* \* \*

The government's entire case thus included only a hair from the stocking mask said to be microscopically indistinguishable from Mr. Tribble's hair; a purported admission from an unreliable witness that could not be reconciled with the undisputed facts; and the admitted sale of a gun and the possession of ammunition with absolutely no proven connection to any crime other than their possession or sale. No reasonable jury could have been convinced beyond a reasonable doubt of Mr. Tribble's guilt of the felony murder and armed robbery of John McCormick on the basis of this evidence had it known – to a scientific certainty – that the hair in the mask had not come from Mr. Tribble.<sup>38</sup>

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<sup>38</sup> The government relied on the hair "match" to survive a motion for judgment of acquittal. Tr. 314.

### **G. Mr. Tribble's Complete Defense**

Santae Tribble, who had turned seventeen only a few months before the events of the summer of 1978 that would change his life forever, had a web of connections to family and friends who could vouch for his whereabouts at the time of both murders with which he was charged. His mother, brother, sister, girlfriend, friend, neighbor and unimpeachable documentary evidence helped demonstrate that he was at his mother's apartment in Seat Pleasant, Maryland when John McCormick was murdered at 3:10 a.m. on July 26, 1978, at 28th Place, S.E.

The Court of Appeals, describing Mr. Tribble's alibi as "coherent and comprehensive," wrote:

The record reveals that appellant had a definite date around which to base his alibi for the [McCormick] murder, and all of his alibi witnesses placed him at his mother's apartment at the time of the shooting.

447 A.2d at 772. The definite date around which memories coalesced was July 26, 1978, the date of Mr. McCormick's murder, and the birthday and the birthday celebration for family friend and member of the household Dara Milline. Ms. Milline, who was born in Yugoslavia, brought her passport to court, which the prosecutor inspected. It showed that July 26 was in fact her birthday. Tr. 402. Mr. Tribble's whereabouts during the week surrounding July 26 were also fixed as a result of his mother's vacation and his duties to care for his grandfather at the Seat Pleasant apartment while she was out of town.

Dorothy A. Tribble, Santae's mother, resided at 6810 Seat Pleasant Drive, Seat Pleasant, Maryland with her father, 83-year-old Oliver Evans, a retired clergyman. Tr. 323, 336, 345. Some of her children, including Santae, continued to live in the family home at 3104 Massachusetts Avenue, S.E. Tr. 324. Mrs. Tribble, who had been employed at Glendale

Hospital for fifteen years as an assistant nurse, went to Texas for her summer vacation in 1978. Tr. 324-25. She went with her friend and co-worker Celestine Barnes. Tr. 328. They traveled between Friday, July 21 and Friday, July 28, 1978, dates confirmed by the receipt for her airline ticket that was entered into evidence. Tr. 325; 434. Mrs. Tribble asked Santae to come to Seat Pleasant to stay with, cook for, and generally take care of his grandfather. Tr. 325-26. She filled the freezer and refrigerator with food. Tr. 326. When she returned on July 28, Santae greeted her and took her bags. Tr. 328. He then accompanied her, Mrs. Barnes and their co-worker Mrs. Giles to pick up their paychecks at Glendale Hospital. Santae did not appear or act nervous. Tr. 330. The food she had left was all gone, except for a single roast. Tr. 326. A phone bill, admitted into evidence, showed a long distance call to Atlanta on July 26. Tr. 327; 434.

Florence Giles, Mrs. Tribble's co-worker and Seat Pleasant neighbor, checked in on the Tribble residence while Mrs. Tribble was in Texas. She telephoned during the week and spoke to Santae and to Mr. Evans. Tr. 345. She testified that she saw Santae twice during the week on the street and spoke with him. She was certain one occasion was on Wednesday (which would have been July 26), because she went to the beauty shop that day and she came across Santae and his girlfriend on her way to the shop. Tr. 345. Mrs. Giles confirmed that she, Mrs. Tribble, Celestine Barnes, and Santae drove to Glendale Hospital together on the day his mother returned from Texas to pick up their checks. July 28, 1978, was pay day. Tr. 344. Santae did not appear in the least bit strange to her. She testified, "No, he seemed to be right jovial." *Id.*

Celestine Barnes also testified. She confirmed that she traveled to Texas with Mrs. Tribble, returning on the 28th (although she mistakenly gave the month as August). Tr. 380. She noticed nothing unusual about Santae's behavior when he met them upon their return. *Id.*

Jewell Tribble, Santae's sister, was four years older than Santae. On July 25, 1978, she went by bus with her two children to Seat Pleasant, intending to stay for Dara Milline's birthday party the next day. Instead, she returned to 3104 Massachusetts Avenue, S.E., that evening. Tr. 350. She saw her grandfather, Santae, her brother James, Santae's girlfriend Sandra, and Dara at the Seat Pleasant home. Tr. 355-56. She testified that "[t]hey had been there the whole week, the whole time my mother was gone." Tr. 356.

James Tribble was Santae's older brother. Although he was living at 3104 Massachusetts Avenue, S.E., he, too, stayed at his mother's Seat Pleasant apartment during the week his mother was in Texas. Tr. 360. Also staying in Seat Pleasant that week were Santae, his girlfriend, Sandra Moore, and Dara Milline. Tr. 367. He recalled that on July 25, the evening before Dara's birthday, he, Dara, Sandra, and Santae were together in the apartment. Although he was not positive of his recollection, he believed his sister Jewell had also stopped by. Tr. 363. He was certain that Santae was in the apartment when he, James, went to bed around 11:00 or 11:30 that evening. He retired early because he had to wake up early to walk to work at Ginns Office Supply Warehouse in Bladensburg, Maryland. When he awoke around 4:45 a.m. on July 26, 1978, in order to be at work by 7:00 a.m., Santae was asleep on the living room floor. Tr. 364. When James returned from work, Santae and his girlfriend were getting ready to travel to their old neighborhood in Southeast in order to cash Sandra's paycheck. Tr. 362. When Santae and Sandra returned, they had items for dinner and some rum and coke. *Id.* They all had "a small party for Dara at my mother's house." Tr. 361.

Sandra Moore was Santae's girlfriend. Tr. 382. During the week Mrs. Tribble was in Texas, she, too, stayed in Seat Pleasant. Tr. 384. Ms. Moore confirmed that she and Santae went together to a liquor store in his old neighborhood in Southeast Washington to cash her

paycheck, but she believed this errand took place on July 25, while Santae, James, and Dara all recalled that it took place on the afternoon of July 26. Tr. 400, 415. They traveled by bus, since no one staying at the Seat Pleasant apartment had a car. Tr. 387. On their return to Maryland, they bought some liquor and food which they brought back to the Seat Pleasant apartment. Tr. 388. On Dara's actual birthday, they "staged a little celebration." Tr. 385, 394. They drank and played cards. *Id.* Sandra slept with Santae on the living room floor every night they were in Seat Pleasant, including the night of July 25 to July 26. He did not leave her during the night. Tr. 387.

Dara Milline began living with the Tribble siblings on Massachusetts Avenue on July 10, 1978. Tr. 398. She spent the week of Mrs. Tribble's vacation in Seat Pleasant at Mrs. Tribble's apartment. On July 25, 1978, the evening before her birthday, she watched television, talked, and played cards with Santae and Sandra at the apartment. Also at the apartment were James and Santae's grandfather. Tr. 399. Santae and Sandra were still up when Ms. Milline went to bed around 2:00 a.m., in the early morning hours of July 26, 1978. They were still in the apartment when Ms. Milline awoke. Tr. 400, 408. That morning, on her birthday, she telephoned her boyfriend in Atlanta. Tr. 400. She testified that Mrs. Tribble did not make her pay for the call when the long distance charge showed up on Mrs. Tribble's phone bill. Tr. 401. On the afternoon of July 26, Santae and Sandra left the apartment together. When they returned, they had food and drink they'd purchased for her birthday celebration. Tr. 401.

Santae Tribble also testified. He described where he was and with whom at all critical times and dates. He also testified that he never took a cab from the corner of Minnesota Avenue and Pennsylvania Avenue to 28th Place, he never told B.J. Phillips that he had, and he never wore a stocking mask to conceal his face. Tr. 411, 421.

The government offered no impeachment evidence of Mr. Tribble's alibi witnesses. None had any impeachable convictions. None had made statements or given testimony that contradicted their recollections of Mr. Tribble's whereabouts. Indeed, the government offered no rebuttal testimony of any kind.

### **III. THIS COURT MUST VACATE THE CONVICTIONS AND DISMISS THE INDICTMENT WITH PREJUDICE**

#### **A. The Statutory Framework**

The Innocence Protection Act provides that “[a] person convicted of a criminal offense in the Superior Court of the District of Columbia may move the court to vacate the conviction or to grant a new trial on grounds of actual innocence based on new evidence.” D.C. Code § 22-4135

(a). The statute requires the movant to set forth “specific, non-conclusory facts”:

- (1) Identifying the specific new evidence;
- (2) Establishing how that evidence demonstrates that the movant is actually innocent despite having been convicted at trial or having pled guilty; and
- (3) Establishing why the new evidence is not cumulative or impeaching.

D.C. Code § 22-4135 (c). Under the statute, this Court “may consider any relevant evidence” in determining this motion, but it “shall consider the following”:

- (A) The new evidence;
- (B) How the new evidence demonstrates actual innocence;
- (C) Why the new evidence is not cumulative or impeaching;
- (D) If the conviction resulted from a trial, and if the movant asserted a theory of defense inconsistent with the current claim of innocence, the specific reason the movant asserted an inconsistent theory at trial[.]

D.C. Code § 22-4135 (g)(1).

The relief granted depends on the standard of proof that is satisfied. “If, after considering the factors listed [above], the court concludes by clear and convincing evidence that the movant is actually innocent of the crime, the court shall vacate the conviction and dismiss the relevant count with prejudice.” D.C. Code § 22-4135 (g)(2). If the court is persuaded that “it is more likely than not that the movant is actually innocent,” it must grant a new trial. D.C. Code § 22-4135 (g)(3). Mr. Tribble more than satisfies the clear and convincing standard. Therefore, this Court must vacate his conviction and dismiss the counts with prejudice.

### **B. The New Evidence Demonstrates Mr. Tribble’s Actual Innocence**

The results of mitochondrial DNA testing of the hairs from the stocking mask are new, irrefutable evidence that Santae Tribble is actually innocent of the felony murder of John McCormick. The hairs left in the mask worn by the perpetrator of the crime did not come from him. Mitochondrial DNA testing also establishes to a scientific certainty that the hairs in the stocking mask did not come from Cleveland Wright.<sup>39</sup> Not only do these DNA results provide a genetic profile of the real perpetrator, they also expose the “science” of hair microscopy used to convict Mr. Tribble as the hokum that it is.

#### **1. FBI Agent Hilverda’s Testimony is Fatally Undermined**

Agent Hilverda testified that hair analysts using low power magnifications of their microscopes can “determine what type of hair it is, whether it is human or animal, determine what race of the hair it came from.” Tr. 68. Agent Malone, at Cleveland Wright’s trial, made the same claim:

Now by this preliminary type of examination, we can tell right away certain things about a hair. We can tell, number one, is the hair human or not. If the hair is human, we can tell positively the

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<sup>39</sup> Mr. Wright also provides an affidavit attesting to his – and Mr. Tribble’s – actual innocence. See Exhibit 3.

race of the individual that the hair originated from. We can tell the body area that the hair originated from. That is, head hair, pubic hair, et cetera.<sup>40</sup>

Agent Hilverda concluded that the hairs from the stocking mask were all human head hairs. Tr. 72. They were not.

Agent Hilverda described his technique for hair analysis once he determined that a hair was human, and its race and the area of the body from which it came: “There are about 15 different characteristics<sup>41</sup> which I will utilize and analyze each [questioned] hair for those characteristics, and then compare them to see if these characteristics match up with those in known samples.” Tr. 68. Using this technique, he claimed that the hair he “removed from the stocking matched in all microscopic characteristics with the hair sample submitted to me from Santae Tribble.” Tr. 73.

Agent Hilverda’s laboratory notes, made available to Mr. Tribble for the first time through a post-conviction Freedom of Information Act request to the Federal Bureau of Investigation, tell a different story. In his notes Agent Hilverda describes the hair he “matched” to Mr. Tribble’s sample hair in the simplest terms. His entire description is as follows: “Q2 [questioned item 2, the hair from the stocking mask as explained *infra*] 1 blk [black] hh [head hair] n.o.[Negroid origin] sfc [sufficient for comparison].” That is to say, the only characteristic

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<sup>40</sup> Wright Tr. 134.

<sup>41</sup> Microscopic hair analysts disagree with respect to the number of characteristics necessary to constitute a “match.” In Donald Gates’ case, Agent Malone testified that he “tested 20 individual characteristics, using a high powered microscope” and that the questioned hairs matched Mr. Gates’ sample “as to all 20 characteristics.” *United States v. Donald E. Gates*, No. 82-1529, Gov’t brief at 8 (emphasis added). “This lack of standards, along with the subjective nature of the analysis, removes the technique from the realm of science.” Paul C. Giannelli, *Microscopic Hair Comparisons: A Cautionary Tale*, 46 No. 3 Criminal Law Bulletin Art 7, at 2 (Summer 2010). See also Cary T. Oien, *Forensic Hair Comparison: Background Information for Interpretation*, 11 Forensic Sci. 1, 14 (Summer 2009) (acknowledging that even the same examiner may describe the same hair differently on different days).



he described other than the race and part of the body from which the hair came was that it was black.

Hilverda's description of the hair sample from Mr. Tribble in his lab notes is more detailed, but many of the characteristics he describes are so elastic that to declare a "match" is to include a range of options. For example, Mr. Tribble's hairs are described as "med[ium] to coarse" in texture; they are "1"[one inch] or less" in length; the clumping of the pigmentation ranges from "med[ium] to heavy"; some "tips [are] split." Nonetheless, Hilverda confidently declared that "the hair that I aligned with Santae Tribble matched in all microscopic characteristics, all characteristics were the same." Tr. 73. Such a phenomenon was rare, he told the jury, making it "likely" that the hair in the stocking mask was Mr. Tribble's. Tr. 70, 76.

The newly available FBI laboratory notes reveal that Agent Hilverda's conclusions were not supported by his bench notes. The newly available results of mitochondrial DNA testing demonstrate that even if Mr. Tribble's hairs did microscopically match the hair in the mask left by the perpetrator, such a match would be a red herring. Rather than revealing the true source of hair, microscopy tragically misleads.

## **2. The FBI Slide of the Hairs from the Stocking Mask is Found**

On April 14, 2011, Metropolitan Police Department Sergeant Arrington located seven evidence envelopes containing physical evidence relating to the Horn and McCormick murders at the MPD evidence warehouse at Shannon Place, S.E. Her search was undertaken in response to Mr. Tribble's motion for post-conviction DNA testing under the Innocence Protection Act. The seventh envelope bore the MPD property control number "J5883" and a label identifying its contents as "pulled head hair, shirt, [and] FBI slides" collected by C.E. Bailey on July 26, 1978,

in relation to the homicide of John McCormick.<sup>42</sup> MPD Mobile Crime Officer Charles E. Bailey took possession of the stocking mask that Officer Snead's German shepherd had found. Wright Tr. 66. On August 1, 1978, MPD submitted the stocking and other evidence collected at the scene of the McCormick homicide to the FBI for laboratory analysis.<sup>43</sup>

The FBI assigned a number – 80801039 – to MPD's August 1, 1978, submission of evidence and identified each item submitted for analysis with a "K" number for evidence from a known source or a "Q" number for evidence from a questioned source. The stocking "recovered from the scene" is identified as "Q2." *Id.* Agent Hilverda found hairs in the mask that were then mounted on a glass slide for microscopic examination. These hairs were also given the identifier Q2 to indicate their source. In all FBI reports, worksheets, and bench notes relating to the McCormick case, the hair from the stocking found by the dog is referred to as Q2, and identified by the FBI lab number 80801039; the letters RK<sup>44</sup> indicate analysis performed by Special Agent James A. Hilverda.

On August 2, 2011, the envelope described above – bearing the label indicating its contents were collected by C.E. Bailey on July 26, 1978, in relation to the McCormick murder – was opened at the MPD Mobile Crime Division. Its contents were inventoried and photographed by an MPD Mobile Crime officer. The envelope contained pulled head hair from the decedent, the decedent's shirt, and "[s]even closed double cardboard mailers containing twelve glass microscope slides from the FBI."<sup>45</sup>

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<sup>42</sup> A photograph of the envelope taken by MPD is appended as Exhibit 5.

<sup>43</sup> MPD Letter to the Honorable William H. Webster, Director, FBI, regarding the Homicide of John W. McCormick (Aug. 1, 1978).

<sup>44</sup> Analysts are identified by letters other than their initials.

<sup>45</sup> Harold A. Deadman, Report of Examination, Case Number M110157, at 1 (Sept. 15, 2011), appended as Exhibit 6.

One cardboard mailer, sealed in tamper evident tape, bore the label: "EVIDENCE 2 GLASS SLIDES CONTAINING (HAIRS) FROM Q2, Q5 80801039 RK."<sup>46</sup> The slide containing the hairs from the stocking that James Hilverda had examined, including the single hair he had microscopically matched to Santae Tribble, had been found.

### **3. Former FBI Analyst Harold Deadman's Examination**

On August 18, 2011, Dr. Harold Deadman, MPD's trace evidence analyst, and a veteran of the FBI hair analysis unit, was present when the package that contained the Q2 glass slide of hairs was opened at the MPD crime laboratory.<sup>47</sup> He examined the slide under a microscope. Mounted on the slide were thirteen individual hairs. As he reported to Assistant United States Attorney Michael Ambrosino on September 2, 2012, "[T]here were 13 hairs on the Q2 slide and one of these 13 were [sic] matched to the suspect by the FBI."<sup>48</sup>

Like Agent Hilverda, Dr. Deadman concluded that all the hairs were human hairs. In his October 3, 2011, memorandum submitting the hairs to Mitotyping for DNA analysis, he wrote, "Enclosed for mitochondrial analysis are 13 human hairs."<sup>49</sup> Dr. Deadman assigned each hair a number, reserving the number 13 for the only hair suitable for microscopic analysis, that is, the hair the FBI had matched to Mr. Tribble. He reported that "one of the hairs is probably the distal end of a head hair fragment that exhibits Caucasian characteristics."<sup>50</sup> This appears in his bench notes as hair number 2, which he describes as light brown, possibly a head hair, and probably

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<sup>46</sup> A photograph of the cardboard slide mailers taken by MPD is appended as Exhibit 7.

<sup>47</sup> Deadman Report of Examination (Sept. 15, 2011).

<sup>48</sup> Case Number M110157, Activity/Communication Log, documenting Deadman's discussion with AUSA Ambrosino (Sept. 2, 2011).

<sup>49</sup> Harold A. Deadman Memorandum submitting hairs to Dr. Terry Melton (Oct. 3, 2011), appended as Exhibit 8.

<sup>50</sup> Deadman Report of Examination (Sept. 15, 2011).

Caucasian. Mitochondrial DNA testing would establish that this hair shared the same genetic profile as eight other hairs in the mask, including the one “matched” to Mr. Tribble, a hair said to exhibit Negroid characteristics. In his notes he describes hair number 3 as a short hair exhibiting Negroid characteristics that is probably a head hair.<sup>51</sup> Mitochondrial DNA testing would establish that this hair, in fact, came from a domestic dog.<sup>52</sup>

Dr. Deadman unmounted the hairs and washed them in a solution to dissolve the permount with which they had adhered to the slide for thirty-three years, took photographs, then sent all thirteen hairs, each now on a separate slide, to Mitotyping for mitochondrial DNA analysis.<sup>53</sup>

#### 4. DNA Testing

Deoxyribonucleic acid (DNA) is the blueprint of our identity and can be found in the nucleus of cells (nuclear DNA, or nDNA), as well as in other cellular components called mitochondria (mitochondrial DNA, or mtDNA). Analysis of mtDNA has proven particularly useful with samples containing old and potentially degraded biological material, as well as biological material originating in certain types of body tissues that do not typically contain enough nuclear material to type, such as hairs.<sup>54</sup> In this case, Mr. Tribble and the government agreed that mtDNA typing offered the best chance of getting meaningful results from the

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<sup>51</sup> Deadman used the following abbreviations: “short hr prob hh NC.” Lab notes, M110157 (Aug. 19, 2011).

<sup>52</sup> Such is the true state of hair microscopy: two FBI-trained analysts, James Hilverda and Harold Deadman, could not even distinguish human hairs from canine hairs.

<sup>53</sup> Deadman Memorandum to Dr. Terry Melton.

<sup>54</sup> See, e.g., John Butler, *FUNDAMENTALS OF FORENSIC DNA TYPING* (2010), at 375. This is because “there are hundreds if not thousands of copies of mtDNA in each cell,” compared with two copies of nDNA. *Id.*

evidence that was central to Mr. Tribble's conviction – the hair from the stocking mask the perpetrator had discarded as he made his escape.

Forensic analysis of mtDNA typically focuses on two regions that are particularly variable between individuals, appropriately named hypervariable region I (HVI) and hypervariable region II (HVII). Put a different way, scientists look at these areas of the mtDNA genome because studies have shown that this is where differences between individuals are most likely to exist.<sup>55</sup> These two regions are composed of several hundred repeating chemical units called bases.<sup>56</sup> Mitochondrial DNA typing involves determining the sequence of these bases and comparing them to a standard mtDNA sequence.<sup>57</sup> Results are reported as a compilation of base differences from this standard for each sample analyzed.<sup>58</sup> The set of base differences for any questioned samples are then compared to the set of differences for any known samples provided.

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<sup>55</sup> That is not to say that additional differences that would distinguish one individual from another cannot be found outside of HVI and HVII.

<sup>56</sup> There are four bases in DNA: adenine, thymine, cytosine and guanine (A, T, C, G). All forensic mtDNA typing laboratories examine a core set of about 600 bases in HVI and HVII; some laboratories also type additional bases flanking this core region. For example, Orchid Cellmark types bases 16024-16365 in HVI and 73-340 in HVII, for a total of 610 bases, while Mitotyping types bases 15998-16400 in HVI and 30-407 in HVII for a total of 781 bases. *See* Mitotyping report at 2, 4 (Jan. 5, 2012). Both labs type a core set of 610 bases, with Mitotyping extending their analysis to about 100 additional bases. Mitotyping uses a screening approach that examines a portion – bases 16160-16400 – of HVI, for a total of 241 bases in cases involving numerous questioned samples believed to originate from the same source; under the screening approach, when these initial 241 bases indicate that the sample at issue originates from the same source as another sample that has already been fully typed, the analysis is considered complete.

<sup>57</sup> This standard, known as the revised Cambridge reference sequence (rCRS; the material used to create the original CRS was resequenced, creating a revised sequence in 1999), is used by all forensic mtDNA typing labs and provides for uniformity in comparison and reporting.

<sup>58</sup> *See, e.g.,* Mitotyping Report at Table 1.

Unlike nuclear DNA, which is inherited as a patchwork from both parents, mitochondrial DNA is inherited wholly from one's mother.<sup>59</sup> Thus, siblings and maternal relatives can be expected to share the same mtDNA type. This fact puts some limitation on the usefulness of mtDNA analysis in forensic investigations: a "match" between a known source and a questioned sample (*i.e.*, the two share the same set of differences from the standard) cannot identify one particular person to a scientific certainty; rather, the most that can be said is that mtDNA analysis failed to exclude that person and others in his or her maternal lineage. However, mitochondrial DNA typing is capable of excluding a particular person as a potential source just as surely as nuclear DNA: if there are two or more base differences between the sets under comparison (*e.g.* the hair from the stocking mask vs. Mr. Tribble's known sample), the person who provided the known sample is excluded to a scientific certainty as the source of the questioned sample.<sup>60</sup>

#### **5. The Results of the Mitochondrial DNA Testing of the 13 Hairs**

On October 14, 2012, Mitotyping Technologies, LLC received by Federal Express the thirteen hairs from slide Q2 that Dr. Deadman had sent. Mitotyping Report at 1. It logged in and renumbered the hairs. Because of its importance to the case, Mitotyping analyzed the single hair suitable for microscopic analysis first. Accordingly, it numbered this hair, which was Dr. Deadman's hair #13, as Mitotyping's hair Q1. Thereafter, it followed in Dr. Deadman's sequence so that Deadman's hair #1 is Mitotyping's Q2, Deadman's hair #2 is Mitotyping's hair Q3, etc.<sup>61</sup>

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<sup>59</sup> While both the father's sperm and the mother's egg contribute to the nucleus (hence the patchwork of nDNA), all of the embryo's other cellular components – including the mitochondria (and consequently mtDNA) – originate solely from the egg. Butler at 378.

<sup>60</sup> See *id.* at 380-81.

<sup>61</sup> Mitotyping prefaces each hair submitted by Dr. Deadman with the MPD lab number M110157, followed by the number Deadman assigned to the hair, followed by (Q2) indicating the slide that was its source, followed by the initials HAD for Harold A. Deadman. Mitotyping

Mitotyping analyzed each hair using standard protocol, obtaining full or partial mitochondrial DNA profiles from all 13 questioned hairs submitted for analysis. Dr. Melton explains this protocol: “A screening approach was used to save time and resources, such that hairs with previously unobserved profiles would have a full mitochondrial DNA profiles developed, while hairs with previously observed profiles were tested for only a part of hypervariable region I.” *Id.* at 2.

Mitotyping began by obtaining a full profile of hair 3137Q1 [Deadman’s hair #13].

Then, using the screening approach, it produced partial profiles from 8 other hairs. It concluded:

The profiles of 3137Q1 (full profile), 3137Q2, 3137Q3, 3137Q6, 3137Q7, 3137Q8, 3137Q10, 3137Q11, and 3137Q12 (all partial profiles) are the same for the common regions developed for these samples, therefore one individual or maternally related individuals could have contributed these 9 hairs.

*Id.* at 5.

Mitotyping also obtained a full profile for 3137Q5 and 3137Q9, and a partial profile for 3137Q13. It concluded that “[t]he profiles of 3137Q5 and 3137Q13 are the same for the common regions developed for these samples, therefore one individual or maternally related individuals could have contributed both of these hairs.” *Id.* Sample 3137Q9 contained a mixture of two or more mitochondrial DNA types. *Id.*

Sample 3137Q4 [Deadman’s hair #3] was a non-human hair. Mitotyping therefore conducted a species analysis which “revealed that this sample was from a domestic dog.” *Id.* at 2.

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begins its own numbering scheme with its laboratory number 3137, followed by a Q to indicate these were questioned samples, rather than known or reference samples. Consequently, the hair microscopically matched to Mr. Tribble by the FBI is described as M110157 Hair #13 (Q2) HAD and identified by Mitotyping as 3137Q1. *Id.* at 1.

## **6. Comparing the Results from the 13 Hairs to DNA Samples from Santae Tribble and Cleveland Wright**

Mitotyping was asked not only to “develop mitochondrial DNA profiles on the questioned hairs,” but also to “compare them to the mitochondrial DNA profile of Santae Tribble to determine if he could be excluded as the contributor of the questioned hairs.” *Id.* at 2. It was also asked to “review the mitochondrial DNA profile for Cleveland Wright that was developed by Orchid Cellmark and reported independently on October 27, 2011, to determine if he could be excluded as the contributor of the questioned hairs.” *Id.* It was able to accomplish all of these tasks and to produce irrefutable scientific evidence that neither Mr. Tribble nor Mr. Wright could have donated any of the hairs in the stocking mask.

On October 11, 2011, Christopher Pipe, a supervisory investigator at the Public Defender Service and member of its Forensic Practice Group, obtained DNA samples from Cleveland Wright by taking buccal swabs, that is, by collecting cheeks cells from inside his mouth using a swab. Mr. Wright willingly provided his DNA for comparison to the DNA results from hairs from the stocking mask notwithstanding that he had been acquitted of the McCormick murder. Although Mr. Wright was known to undersigned counsel, he nonetheless brought photo identification establishing his identity. Mr. Pipe used standard protocols to take the buccal swabs: He wore gloves. He used sterile swabs. After obtaining cells from the right cheek he packaged the swabs in a container, labeled it, and sealed it with tamper-evident tape; then repeated the procedure for the left cheek. He placed both containers into an envelope which he sealed using tamper-evident tape, and to which both he and Mr. Wright affixed their signatures. Staff investigator Patricia Slater photographically documented the procedure that was also



observed by undersigned counsel.<sup>62</sup> The package was deposited with Federal Express for overnight delivery to Orchid Cellmark.

Orchid Cellmark received the package on October 12, 2011. Report of Orchid Cellmark at 1.<sup>63</sup> Orchid Cellmark conducted mitochondrial DNA analysis of Mr. Wright's sample, obtaining a full profile. *Id.* The case file and all e-data were sent to Mitotyping. Dr. Melton evaluated Orchid Cellmark's report and the underlying data and concluded: "The mitochondrial DNA analysis carried out by Orchid Cellmark on the known sample of Cleveland Wright appears to have been done correctly and yielded a full profile." Mitotyping Report at 2.

On October 31, 2011, Mr. Pipe took buccal swabs from Santae Tribble, using the same method he used to collect samples from Cleveland Wright. This procedure was photographically documented by Faheemah Davillier, a staff investigator at PDS, and observed by undersigned counsel.<sup>64</sup> Assistant United States Attorney Robert Okun, Chief of Special Proceedings, and Assistant United States Attorney Timothy Lucas, who is assigned to Mr. Tribble's case, were invited to witness the procedure personally or through representatives of their choosing. Both declined the invitation as unnecessary.

On November 1, 2011, Mitotyping received by Federal Express the package containing Mr. Tribble's buccal swabs. The swabs were contained in a "gum-sealed white envelope," labeled, and accompanied by "authenticating documentation." Mitotyping Report at 2.

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<sup>62</sup> Photographs documenting the taking of a DNA sample from Mr. Wright are appended as Exhibit 9.

<sup>63</sup> Report of Laboratory Examination by Orchid Cellmark of mtDNA of Cleveland Wright (October 27, 2011), appended as Exhibit 10.

<sup>64</sup> Photographs documenting the taking of a DNA sample from Mr. Tribble are appended as Exhibit 11. These are some of the photographs that were taken; the entire series was shared with the United States.

Mitotyping obtained a complete mitochondrial DNA profile from Mr. Tribble's sample, which it designated 3137K1. *Id.*

Mitotyping compared Mr. Tribble's and Mr. Wright's mtDNA profiles to the profiles of the 13 questioned samples. It positively excluded Santae Tribble and Cleveland Wright as the donor of each and every one of the 13 hairs it analyzed. With respect to 11 of the hairs, Dr. Melton explains the results as follows:

The mitochondrial DNA profiles of 3137Q1-3137Q8 and 3137Q10-3137Q13 are different from the profile of 3137K1, therefore Santae Tribble and his maternal relatives are excluded as the contributor of every hair. In addition, Cleveland Wright and his maternal relatives are also excluded as the contributor of every hair.

*Id.* at 5. (emphasis added).

With respect the sample 3137Q9, the mixture, the conclusion is the same: "Despite the presence of a mixture, Santae Tribble and Cleveland Wright and their maternal relatives can be excluded as contributors of the biological material in the 3137Q9 questioned sample. *Id.* (emphasis added).

For obvious reasons, no comparison was necessary to the profile of the domestic dog.

#### **7. The New Evidence is Neither Cumulative Nor Impeaching**

The scientific results are dispositive: neither Mr. Tribble nor his putative partner in crime Cleveland Wright left the hairs in the stocking mask abandoned by the perpetrator near the scene of the crime. These results obliterate the testimony of Special Agent James Hilverda and the argument of Assistant United States Attorney Stanley. The chance that the head hair found in the stocking came from Santae Tribble was not ten million to one. It is, in fact, zero.

This new evidence is neither cumulative nor solely impeaching. It is substantive proof of the innocence of Mr. Tribble, and it points toward the guilt of the unknown donors of the hairs in

the abandoned mask. A nylon stocking is a perfect medium for collecting hairs. If worn as a mask pulled tightly over the head and down over the face, then pulled off and discarded, shed head hairs and broken hair fragments will likely be found in or on its nylon webbing. The prosecution theory that the perpetrator left his calling card in the hairs in the stocking mask was not in error; what was in error was the belief that microscopy could read that card. It could not.

Mitochondrial DNA testing reveals a genetic profile for the source of those hairs. It thus points to the person,<sup>65</sup> as yet unknown, who pulled the stocking over his head to obscure his facial features when he approached John McCormick on his front porch near 3:00 a.m. on July 26, 1978, to rob and kill him.

### **C. Mr. Tribble Has Always Maintained that He Is Innocent**

This motion is supported by “an affidavit by the movant, under penalty of perjury, stating that the movant is actually innocent of the crime that is the subject of the motion, and that the new evidence was not deliberately withheld by the movant for purposes of strategic advantage,” as required by the statute.<sup>66</sup> D.C. Code § 22-4135 (d)(1). Although this affidavit is new, the assertion of innocence is not.

Mr. Tribble has always maintained that he is innocent. He testified at trial under oath and presented a substantial alibi defense. The presentence report writer informed the court that “[h]e completely denies his guilt.”<sup>67</sup> The Classification Committee that completed the Youth Act Study (and recommended a Youth Act sentence) found that Mr. Tribble “claims absolutely no knowledge of this offense” and that his “mother is absolutely convinced that her son is not

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<sup>65</sup> Although the circumstances of their recovery makes it likely that these hairs came from a single person, for reasons discussed above it is possible that they came from two or more maternally-related individuals.

<sup>66</sup> Santae A. Tribble’s Affidavit of Actual Innocence (Jan. 17, 2012), is appended as Exhibit 12.

<sup>67</sup> Presentence report at 3.

guilty.”<sup>68</sup> Anne Cuningham, Director of the Visitor’s Services Center at the District of Columbia Jail, wrote a letter to Judge Bacon for her consideration at sentencing in which she stated:

Mr. Tribble’s feelings during his period of incarceration have included ... overwhelming confusion over a verdict of guilty for a crime which he continued to insist that he was not a participant.<sup>69</sup>

Mr. Tribble took and passed polygraph examinations in November 1978 while he was held in pretrial detention at the District of Columbia Jail. With respect to the killing of John McCormick, he was asked the following questions and gave the following answers:

A. On July 26, 1978 at 28th Place, S.E., were you present when John McCormick was shot?

“No.”

B. Did you shoot John McCormick?

“No.”

C. Were you with Cleveland Wright when John McCormick was shot?

“No.”

D. Do you know for sure who shot John McCormick?

“No.”

E. Have you lied about your alibi for the time John McCormick was shot?

“No.”

Mr. Tribble’s answers were found by the examiner to be truthful. In addition, the examiner found that in a separate polygraph examination Mr. Tribble gave truthful answers with respect to his lack of involvement in the murder of William Horn. A copy of the polygraph report was presented to the District of Columbia Court of Appeals in support of Mr. Tribble’s

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<sup>68</sup> Classification Committee’s Findings and Conclusions (April 24, 1980).

<sup>69</sup> Letter from Anne Cuningham to Judge Bacon (March 3, 1980) at 2.

unsuccessful appeal from the denial of a bond review motion and to the Superior Court at sentencing.<sup>70</sup>

Mr. Tribble served his mandatory minimum sentence of twenty years (Judge Bacon denied him Youth Act sentencing notwithstanding the recommendations in his favor), before he saw a parole hearing examiner for the first time on September 14, 1998. He told the examiner he did not commit the crime.<sup>71</sup> Despite an excellent institutional record, and participation in educational and other programs, he was denied parole. The reason: he had been convicted of murder, and he had been seventeen years old at the time of its commission, two immutable facts that made the denial of parole a foregone conclusion, although Mr. Tribble, who had waited twenty years for the hearing, was the last person to be so informed.<sup>72</sup> On June 1, 2000, he had another parole hearing. Again, he asserted his innocence. Again, he was denied parole. Finally, after his third hearing on December 9, 2002, parole was granted. He was released from a halfway house on August 18, 2003. To date, Santae Tribble has served 28 years of incarceration and 5 years under an onerous parole supervision for a crime he did not commit.

**D. Mr. Tribble Did Nothing to Bring About His Wrongful Conviction; His Defense Is As True Today As It Was At the Time It Was Presented**

Mr. Tribble did nothing to bring about his wrongful conviction. He waited for the police, who had called in advance, to execute the first of two arrest warrants charging him with murder. Tr. 332-33. After he was released at presentment into the custody of his mother, he was arrested a second time without incident at her home. He cooperated with the police following each arrest, expressly waiving his *Miranda* rights on at least one occasion. But he made no

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<sup>70</sup> See Superior Court Record at 153, Court of Appeals Record at 156.

<sup>71</sup> Parole Hearing of Santae Tribble, Tr. at 5 (Sept. 14, 1998).

<sup>72</sup> *Id.* at 20-21.

statements falsely taking responsibility for either offense; nor did he point an accusatory finger towards another as he knew nothing of either crime.

At trial, through counsel, he challenged the reliability and probative value of the hair evidence, the credibility of B.J. Phillips, and the relevance of the ballistics evidence, just as he does now. He testified truthfully. He presented a truthful defense – he had been asleep at his mother’s home in Seat Pleasant, Maryland, in the company of family and friends, at the time the crime was committed – the same defense that he relies upon now.

He suffered grievous losses while in prison. Most of his witnesses, many of them family members, died while he was incarcerated. His mother Dorothy Tribble died in August 1994. His sister Jewell Tribble died in March 1996. Reverend Oliver Evans, his grandfather, died in 1981. Sandra Moore has also died.

But James Tribble, Santae’s older brother by seven years, is still alive. He is as sure today that Santae is innocent of the murder of John McCormick as he was in 1978.<sup>73</sup> On December 24, 1978, he wrote a letter to Judge Annice Wagner, who was then presiding over Santae’s case, in support of a motion to reduce Santae’s bond. The motion was denied, and Santae Tribble would spend more than one-and-a-half years in pretrial detention awaiting trial. The record does not disclose whether the letter, which reads in part as follows, was actually sent:

Dear Judge Wagner,

I am writing this letter on behalf of Santae A. Tribble, as well as myself. I feel that I am qualified to do so because I’ve been both an older brother as well as father to him, since our father left home some thirteen years ago. I know Santae very well to say the least. He often confides in me or asks for my advice. I know him well enough to know for sure, that he is not the type of person some would have this court believe he is.

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<sup>73</sup> Affidavit of James Tribble, appended as Exhibit 13.

Without going into details, I would like for this court to know that at the time and date of one of the two crimes Santae is now accused of, he was with me along with two other persons [Sandra Moore and Dara Milline]. As far as the other case is concerned, I can only go by what I've said earlier, "I know Santae." I have looked him in his eyes and he into mine and I have asked him about what happened and he has told me that he knows nothing about it at all. And I'm satisfied that he doesn't.

Our entire family is assured and confident that Santae's innocence will be proved in a court of law. However, we are all afraid of his spending more time in jail for a crime he did not commit.<sup>74</sup>

James had been honorably discharged from the United States Army in 1977, after enlisting as a seventeen year old in 1971 and serving his country for more than five years. He affirms in his affidavit that he told the truth at trial. He got up very early to walk to work from his mother's home in Seat Pleasant, Maryland, where he had come to look after his grandfather, to the Ginns Office Warehouse on Kilner Place in Bladensburg, Maryland. He knows that Santae and his girlfriend were awake, in the apartment, when he went to bed, and they were asleep on the living room floor when he left to go to work on the morning that the cab driver was murdered in the District of Columbia. A copy of his time card still exists. It shows that he punched in at 6:57 on the morning of July 26, 1978, and punched out at 3:00, in time to arrive home for Dara Milline's birthday celebration.<sup>75</sup>

AUSA Stanley mocked James' testimony in closing argument: "James who walks ten miles to work every day, it sounds almost like Abe Lincoln. He gets up at quarter of five in the morning and Santae is there sleeping on the floor[.]" Tr. 474. The prosecutor's derision

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<sup>74</sup> See James Tribble Affidavit at 1-2. The original letter, which is in the file, is too faint for photocopying.

<sup>75</sup> James Tribble's time sheet for the pay period ending July 30, 1978, is appended as Exhibit 14.

notwithstanding, the alibi was true – only the estimate of distances had been was misjudged.<sup>76</sup> It was the government's evidence that deceived.

Dara Milline also survives. On July 21, 2011, undersigned counsel reached her by telephone. She said that she had told the truth at trial and had been surprised that Mr. Tribble was convicted. She wished him well.

The government's witness, in contrast, refuses to confirm the truth of her testimony. As previously stated, B.J. Phillips, now known as Bobby Bess, claims "amnesia."<sup>77</sup>

Vito Potenza, Mr. Tribble's defense attorney at trial, has retired from the practice of law, but he has not forgotten his deep concerns that his client had been actually innocent and that he had failed to prevent his wrongful conviction.<sup>78</sup> In his affidavit, he writes: "The representation was one of the most frustrating and the most troubling for me of my career. I always believed Mr. Tribble was innocent, and I was haunted by my inability to convince the jury." Potenza Affidavit at 1.

Mr. Potenza, a graduate of Georgetown Law School, joined the PDS trial division with its October 1976 training class and remained at PDS until June or July of 1980, not long after Mr. Tribble was sentenced to twenty years to life in prison on May 12, 1980. From PDS he went to the Office of the General Counsel at the National Security Agency, where he spent the next 29 years. In October 2006, he was named General Counsel of the NSA, a position he held until his retirement in October 2009. *Id.*

The National Security Agency is an intelligence component of the Department of Defense with responsibility for producing foreign intelligence information from foreign

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<sup>76</sup> Affidavit of James Tribble at 2.

<sup>77</sup> Affidavit of Patricia Slater.

<sup>78</sup> Affidavit of Vito T. Potenza at 1.



communications and also protecting U.S. Government communications from exploitation by foreign governments. As an attorney with the NSA, Mr. Potenza held numerous high level security clearances and was subjected to a thorough background check and to periodic polygraphing. *Id.*

With respect to Mr. Tribble's case, Mr. Potenza attests:

I have reviewed the Motion for Post-Conviction DNA testing that Ms. Levick shared with me after she filed it, and many of the facts of the case came flooding back to me. But even before reading the motion I vividly recalled Mr. Tribble and his case. I remembered that the case was terribly thin and that Mr. Tribble was so young, and that I always was concerned that the jury's verdict had been wrong.

Upon review of the motion, I remembered the hair evidence. I now recall how central it was to the conviction. I recall the jury's note asking about the mask. . . . I remember my abject disappointment that I could not persuade the jury not to rely on the hair evidence.

\* \* \*

I am deeply gratified that it was possible to do DNA testing of the hairs and heartened that the results confirmed my belief that they were not Santae's. At the same time, I am saddened that I could not prevent his many, many years of wrongful imprisonment.

*Id.* at 1-2.

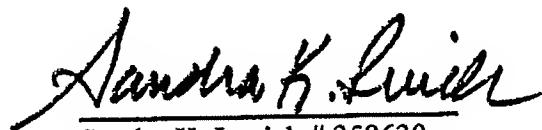
#### IV. CONCLUSION

Mr. Tribble has more than satisfied his burden of establishing by clear and convincing evidence that he is actually innocent. In light of the entire record, including the indisputable scientific proof that the hairs in the stocking mask did not come from Santae Tribble or Cleveland Wright; the fact that those hairs point in the direction of an entirely unrelated perpetrator who left nine of his hairs in the stocking mask, including the hair used to convict Mr.

Tribble; the extraordinary weakness of the government's case, indeed its legal insufficiency without the fatally flawed hair evidence; Mr. Tribble's compelling, "coherent and comprehensive" alibi defense, which remains as true today as was at the time that it was presented; and his unwavering assertions, for thirty-three years, of his innocence – even when such assertions could, and did, hurt him – there exists clear and convincing evidence that Santae Tribble is actually innocent of the felony murder of John McCormick.

WHEREFORE, for the foregoing reasons, it is respectfully requested that this motion be granted, and that this Court vacate the conviction and dismiss the indictment with prejudice on the grounds of actual innocence.

Respectfully submitted,

A handwritten signature in black ink, reading "Sandra K. Levick". The signature is fluid and cursive, with the first name "Sandra" being the most prominent.

Sandra K. Levick # 358630  
Chief, Special Litigation Division  
Public Defender Service  
633 Indiana Avenue, N.W.  
Washington, D.C. 20004

Slevick@pdsdc.org  
202-824-2383 (direct)  
202-824-2983 (fax)

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Vacate Conviction and Dismiss Indictment With Prejudice on the Grounds of Actual Innocence Under the Innocence Protection Act has been served by hand and by electronic mail on Robert Okun, Chief, Special Proceedings Division, and Timothy Lucas, Special Proceedings Division, 555 4th Street, N.W., Washington, D.C. 20001, this 19th day of January, 2012.

  
Sandra K. Levick

# EXHIBIT 1

Case 3137

January 5, 2012

Sandra K. Levick  
Chief, Special Litigation Division  
Public Defender Service for the District of Columbia  
633 Indiana Avenue, N.W.  
Washington, DC 20004

Re: Santae A. Tribble  
Test Report for Mitotyping Technologies Case No. 3137

**Items of Physical Evidence and Background**

On October 14, 2011, Mitotyping Technologies, LLC received via FedEx 8635 0500 2851 from Harold Deadman of the Washington DC Metropolitan Police Department the following items:

- 1) Seven sealed cardboard slide carriers:
  - a. "M110157 Hairs #1 and #2 (Q2) HAD". The 3 mm hair labeled as #1 was taken for testing, consumed, and designated 3137Q2. The 6 mm hair labeled as #2 was taken for testing, consumed, and designated 3137Q3.
  - b. "M110157 Hairs #3 and #4 (Q2) HAD". A 2 cm portion of the 3 cm hair labeled as #3 was taken for testing and designated 3137Q4. The 6 mm hair labeled as #4 was taken for testing, consumed, and designated 3137Q5.
  - c. "M110157 Hairs #5 and #6 (Q2) HAD". The 4 mm hair labeled as #5 was taken for testing, consumed, and designated 3137Q6. The 6 mm hair labeled as #6 was taken for testing, consumed, and designated 3137Q7.
  - d. "M110157 Hairs #7 and #8 (Q2) HAD". The 8 mm hair labeled as #7 was taken for testing, consumed, and designated 3137Q8. The 6 mm hair labeled as #8 was taken for testing, consumed, and designated 3137Q9.
  - e. "M110157 Hairs #9 and #10 (Q2) HAD". The 6 mm hair labeled as #9 was taken for testing, consumed, and designated 3137Q10. The 3 mm hair labeled as #10 was taken for testing, consumed, and designated 3137Q11.
  - f. "M110157 Hairs #11 and #12 (Q2) HAD". The 1 cm hair labeled as #11 was taken for testing, consumed, and designated 3137Q12. The 3 mm hair labeled as #12 was taken for testing, consumed, and designated 3137Q13.
  - g. "M110157 Hair #13 (Q2) HAD". The 1.2 cm hair on this slide labeled as #13 was taken for testing, consumed, and designated 3137Q1.

On November 1, 2011, the laboratory received via FedEx 8753 7863 4673 from Chris Pipe of the Public Defenders Office the following item:

- 1) One gum-sealed white envelope labeled in part "Item # Buccal swab (2) Date 10/31/11, Location found Santae Tribbe [sic]". This sample from Santae Tribble, which was accompanied by authenticating documentation, was designated 3137K1.

It was requested that this laboratory develop mitochondrial DNA profiles on the questioned hairs and compare them to the mitochondrial DNA profile of Santae Tribble to determine if he could be excluded as the contributor of the questioned hairs. It was also requested that the laboratory review the mitochondrial DNA profile for Cleveland Wright that was developed by Orchid Cellmark and reported independently on October 27, 2011, to determine if he could be excluded as the contributor of the questioned hairs.

#### **Mitochondrial DNA (mtDNA) Analysis**

All samples were analyzed according to standard protocol. A screening approach was used to save time and resources, such that hairs with previously unobserved profiles would have full mitochondrial DNA profiles developed, while hairs with previously observed profiles were tested for only a part of hypervariable region 1. For 3137Q1, 3137Q5, 3137Q9 and 3137K1, a complete mitochondrial DNA profile was obtained, comprising nucleotide positions 15998-16400 (hypervariable region 1; HV1), and nucleotide positions 30-407 (hypervariable region 2; HV2). For sample 3137Q13, a partial hypervariable region 1 profile was obtained, comprising nucleotide positions 15998-16355. The screening approach (obtaining nucleotide positions 16160-16400) was used for all remaining samples with the exception of 3137Q4. Sample 3137Q4 was a non-human hair, and a 12S species analysis revealed that this sample was from a domestic dog. All reagent blank negative controls and PCR negative controls that accompanied the samples throughout testing remained free of contaminating DNA. Table 1 (next page) shows the nucleotide substitutions with respect to the standard published reference sequence for the samples in this case.

The mitochondrial DNA analysis carried out by Orchid Cellmark on the known sample of Cleveland Wright appears to have been done correctly and yielded a full profile.

Case 3137  
Table 1. Case 3137: Nucleotide substitutions in HV1 and HV2 for 3137Q1-3137Q3, 3137Q5-3137Q13, 3137K1, and C. Wright.

Hypervariable Region 1																						
Sample	16095	16099	16124	16126	16185	16187	16189	16223	16264	16265	16270	16278	16286	16292	16294	16311	16319	16327	16339	16360	16390	
Standard	C	C	T	T	C	C	T	C	C	A	C	C	C	C	C	T	G	C	C	C	G	
3137Q13	.	.	.	C	.	T	C	T	T	.	T	T	.	.	.	C	.	.	Y	nd	nd	
3137Q9	Y	Y	C	.	.	.	C*	T	.	.	T	T	.	.	.	.	A	.	.	.	.	
3137Q5	.	.	.	C	.	T	C	T	T	.	T	T	.	.	.	C	.	.	.	.	.	
3137Q12	nd				.	.	.	T	.	.	.	.	.	.	.	.	.	T	.	.	.	
3137Q11	nd				.	.	.	T	.	.	.	.	.	.	.	.	.	T	.	.	.	
3137Q10	nd				.	.	.	T	.	.	.	.	.	.	.	.	.	T	.	.	.	
3137Q8	nd				.	.	.	T	.	.	.	.	.	.	.	.	.	T	.	.	.	
3137Q7	nd				.	.	.	T	.	.	.	.	.	.	.	.	.	T	.	.	R	
3137Q6	nd				.	.	.	T	.	.	.	.	.	.	.	.	.	T	.	.	.	
3137Q3	nd				.	.	.	T	.	.	.	.	.	.	.	.	.	T	.	.	.	
3137Q2	nd				.	.	.	T	.	.	.	.	.	.	.	.	.	T	.	.	.	
3137Q1	.	.	.	.	.	.	.	T	.	.	.	.	.	.	.	.	.	T	.	.	.	
3137K1	.	.	.	.	.	T	C	T	.	C	.	T	A	T	T	C	.	.	.	T	.	
C. Wright^	.	.	.	.	T	.	.	T	.	.	.	.	.	.	.	C	.	T	.	.	nd	

Case 3137

Hypervariable Region 2																				
Sample	73	79	146	150	152	182	185	186	189	195	198	200	231	247	263	297	309.1	315.1	316	357
Standard	A	G	T	C	T	C	G	C	A	T	C	A	C	G	A	A	--	--	G	A
3137Q13	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd
3137Q9	G	R	C	.	C	.	.	.	.	C	.	.	Y	.	G	.	.	C	.	.
3137Q5	G	.	.	.	C	T	T	.	G	C	.	.	.	A	G	.	.	C	.	G
3137Q12	nd																			
3137Q11	nd																			
3137Q10	nd																			
3137Q8	nd																			
3137Q7	nd																			
3137Q6	nd																			
3137Q3	nd																			
3137Q2	nd																			
3137Q1	G	.	.	T	.	.	.	.	G	.	.	G	.	G	G	.	.	C	.	.
3137K1	G	.	.	.	C	T	.	A	C	C	T	.	.	A	G	G	C*	C	A	.
C. Wright <sup>^</sup>	G	.	.	T	.	.	A	.	G	.	.	.	.	.	G	.	C	C	.	nd

Table Notes: (--) means that at this position in the published reference sequence (Standard, top line) there is no nucleotide and the sample has an insertion. (nd) means not determined.

(.) means that the nucleotide at this position is the same as in the Standard.

(\*) means that length heteroplasmy was observed in the homopolymeric C-stretch associated with this site.

(R) means that both an A and a G were observed. (Y) means that both a T and a C were observed.

<sup>^</sup>C. Wright sample developed by Orchid Cellmark for HIV 1 16024-16365 and HIV2 73-340.



### **Interpretation of Results**

Full or partial mitochondrial DNA profiles were obtained from all questioned 13 hairs submitted for analysis. The mitochondrial DNA profiles of 3137Q1-3137Q8 and 3137Q10-3137Q13 are different from the profile of 3137K1, therefore Santae Tribble and his maternal relatives are excluded as the contributor of every hair. In addition, Cleveland Wright and his maternal relatives are also excluded as the contributor of every hair.

The mitochondrial DNA profile of 3137Q9 shows a mixture of two or more mitochondrial DNA types. When a mixture profile is obtained, the number of potential mtDNA types that may be derived from that mixture is equal to  $2^n$ , where  $n$  is equal to the number of nucleotide positions at which two different nucleotides have been observed. The conclusion that may be drawn from a mixture where the type of a known individual is present in that mixture is "the profile of this known individual is one of the profiles that may be derived from the nucleotide substitutions observed in the mixture". Many caveats apply to the handling of mixtures in mitochondrial DNA testing.

For the 3137Q9 sample, the number of possible types in the observed mixture is 16, based on the presence of 4 mixed sites with two nucleotides in each (all of these types are not equally probable). Despite the presence of a mixture, Santae Tribble and Cleveland Wright and their maternal relatives can be excluded as contributors of the biological material in the 3137Q9 questioned sample.

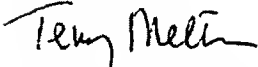
The profiles of 3137Q1 (full profile), 3137Q2, 3137Q3, 3137Q6, 3137Q7, 3137Q8, 3137Q10, 3137Q11, and 3137Q12 (all partial profiles) are the same for the common regions developed for these samples, therefore one individual or maternally related individuals could have contributed these 9 hairs.

The profiles of 3137Q5 and 3137Q13 are the same for the common regions developed for these samples, therefore one individual or maternally related individuals could have contributed both of these hairs.

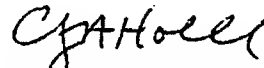
The profile of 3137Q4 is consistent with that of a domestic dog.

Please do not hesitate to contact us if you have questions about this report. Unless other arrangements are made in advance, we will return all remaining evidentiary materials via FedEx within 30 days.

Sincerely,



Terry Melton, PhD  
Laboratory Director  
Forensic Examiner  
*Author*



Charity A. Holland, MPH  
Quality Manager  
Forensic Examiner  
*Technical Reviewer*

**End of Report.**

## EXHIBIT 2

## AFFIDAVIT OF VITO T. POTENZA

My name is Vito T. Potenza. As a trial attorney at the Public Defender Service I represented Santae A. Tribble. The representation was one of the most frustrating and the most troubling for me of my career. I always believed Mr. Tribble was innocent, and I was haunted by my inability to convince the jury.

I am a graduate of Georgetown Law School. I joined the Public Defender Service as an intern in the Correctional Services Program in July 1974, after my second year of law school. I was hired as a staff attorney with that program upon passing the bar exam. I joined the trial division at the Public Defender Service with the October 1976 training class and remained at PDS until the summer of 1980.

I left PDS to accept employment as a lawyer with the Office of the General Counsel at the National Security Agency. I spent the next twenty-nine years at the NSA, retiring in October 2009. In October 2006, I was named General Counsel of NSA, a position I held until my retirement.

The National Security Agency is an intelligence component of the Department of Defense with responsibility for producing foreign intelligence information from foreign communications and also protecting U.S. Government communications from exploitation by foreign governments. As an attorney with the NSA I have held numerous high level security clearances and have been subjected to a thorough background check and periodic polygraphing.

I have reviewed the Motion for Post-Conviction DNA testing that Ms. Levick shared with me after she filed it, and many of the facts of the case came flooding back to me. But even before reading the motion I vividly recalled Mr. Tribble and his case. I remembered that the case

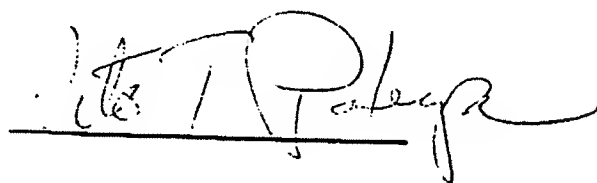
was terribly thin and that Mr. Tribble was so young, and that I always was concerned that the jury's verdict had been wrong.

Upon review of the motion, I remembered the hair evidence. I now recall how central it was to the conviction. I recall the jury's note asking about the mask. I have reviewed the PDS trial jacket that bears the notation "1/21/80 . . . 4:36 note re mask" and recognize the handwriting to be my own. I remember my abject disappointment that I could not persuade the jury not to rely on the hair evidence.

I have also reviewed a draft of the Motion to Vacate Conviction and Dismiss Indictment with Prejudice on the Grounds of Actual Innocence prepared on Mr. Tribble's behalf. I have reviewed the discovery memorandum regarding a meeting with AUSA Haney on August 20, 1979, that is cited in the motion. Although I do not recall the discovery session, I do recognize the memorandum as one that I would have prepared routinely, and I recognize the handwriting on the memo to be my own.

I am deeply gratified that it was possible to do DNA testing of the hairs and heartened that the results confirmed my belief that they were not Santae's. At the same time, I am saddened that I could not prevent his many, many years of wrongful imprisonment.

I swear, under penalty of perjury, that the foregoing 2-page statement is true to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Glenetta M. Harris", written over a horizontal line.

Dated: January 11, 2012

Glenetta M. Harris  
Notary Public, District of Columbia  
My Commission Expires 4/14/2012

## EXHIBIT 3

## AFFIDAVIT

My name is Cleveland Wright. I was born on March 4, 1958. I live at

Washington, D.C. I currently work at the Safeway as a stock clerk.

I give this statement to Sandra K. Levick, an attorney with the Public Defender Service for the District of Columbia, who represents Santae Tribble, freely and voluntarily. No one has promised me anything for my statement. I am meeting with Ms. Levick at her office at the Public Defender Service on Tuesday morning, November 2, 2010. Also present is Michael Rucker and Gina Paniagua, investigators for the Public Defender Service.

In 1978 I was twenty years old. Santae Tribble was my good friend. We'd grown up together. Santae and I were charged with two murders. I didn't have anything to do with either murder. I never killed anyone in my life. I don't believe that Santae had anything to do with them either.

I never made any statements to anyone that I killed anyone or that Santae killed anyone. I never heard Santae say that he killed anyone.

When I was locked up for this crime that I didn't commit, I couldn't believe it had happened to me. It almost drove me crazy in prison. The entire time I was incarcerated, when I read about cases where people had been incarcerated for crimes they hadn't committed, I wrote to the people that worked on their cases. I wrote to Centurion Ministries. I wrote to the Innocence Project. I wrote to many organizations that worked on cases for people who had been wrongfully convicted.

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I worked in the print shop in Petersburg, Virginia. I'd copy my transcripts that my mother had gotten and send them to people trying to get help.

While I was in prison, I found God. I would open the Bible and see God speaking right to me. It gave me peace and joy. My mother always said that God's time is not our time. I didn't like to hear that. I would tell her, but I'm in here for something I didn't do. But I came to accept it.

I spent twenty-eight and a half years incarcerated. I made parole on the third time. I wouldn't say I was accountable because I never killed anyone.

Over a year after I got out, I saw Ronnie Willis walking down the street on Livingstone Road. He saw me at the same time I was driving by. It looked like he was coming from the store. He set his bag down and turned his face away from me. It appeared like he didn't want to be seen. I pulled up and got out of my car. I went to him and said, "Hey, man." I told him I forgave him. He said he'd been tricked by the police. He told me he'd also done time for something he didn't do. I told him seriously, that I forgave him. I asked him to give me a hug to show that I meant it and he did. It looked like a relief came over him. He started laughing and talking with me about how we used to go hunting together when we were young. He asked me whose car I was driving. I told him that my father had signed for me to get it. He then said that your father had always looked out for you. I agree. My father and mother have stood by me the whole time.



I have read this three- page Affidavit and I have had it read to me. I swear, under penalty of perjury that it is true. I am innocent of the murders with which Santae Tribble and I were charged. I have never killed *anyone* in my life.

Cleveland Wright  
Cleveland Wright

Witnesses: Sandra K. Levick  
Sandra K. Levick  
Michael Rucker  
Michael Rucker  
Gina Paniagua  
Gina Paniagua

District of Columbia: SS

Subscribed and sworn to before me, in my presence,  
this 2nd day of November, 2010

PATRICIA A. SLATER  
Notary Public, D.C.

My commission expires PATRICIA A. SLATER  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires September 30, 2013

## EXHIBIT 4

AFFIDAVIT OF PATRICA A. SLATER

My name is Patricia Slater. I am a supervisory staff investigator at the Public Defender Service for the District of Columbia. I am assigned to work on the investigation of Santae Tribble's case.

On Sunday, October 2, 2011, at approximately 3:00 p.m., I went to attempt to interview B.J. Phillips at her apartment in northwest, D.C. Records indicate that she now goes by the name of Bobby Bess. When I knocked on the door to her apartment a black female who appeared to be in her 50s answered. I introduced myself, showed her my photo ID and told her that I was working on behalf of Santae Tribble who was seeking DNA testing that might lead to an exoneration. Ms. Bess acknowledged that she remembered Mr. Tribble's case and agreed that it was a long time ago. We briefly discussed Brenda McLean and she told me that she didn't know where Brenda was and hasn't talked her or anyone since that time. Ms. Bess said that all she's going to say is that she's got amnesia.

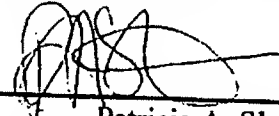
I asked Ms. Bess about Mr. Tribble. Ms. Bess asked me how I found her and I told her I was given instructions by the attorney I worked for at the Public Defender Service, Sandy Levick. Ms. Bess told me to tell Ms. Levick that she's got amnesia.

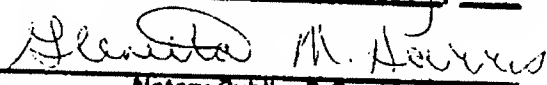
A man in the apartment then came to the partially opened door and asked me how I got there. After I explained and told him that I worked for the Public Defender Service for the District of Columbia he grabbed Ms. Bess and pulled her away from the door and then shut the door.

I swear, under penalty of perjury, that this statement is true to the best of my knowledge.

Date: January 17, 2012

Glenetta M. Harris  
Notary Public, District of Columbia  
My Commission Expires 4/14/2012

  
Patricia A. Slater

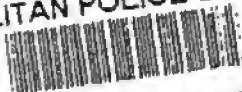
District of Columbia: SS  
Subscribed and Sworn to before me,  
this 17th day of January, 2012  
  
Notary Public, D.C.  
My commission expires 4/14/2012

## EXHIBIT 5

J58883

FORM 14

METROPOLITAN POLICE DEPARTMENT



Barcode: 10165634  
Old PCN: J58883 Items #:  
Packaging Code: Prop. Class: Evidence  
Recovered By:  
Desc:

CCN:

5-26-78

Homicide

Cleveland Wright

John Mc Cormick

C. E. Bailey

#13. Pulled head hair

#14. Shirt.

BF Slides

None

Property Clerk

District

side

## EXHIBIT 6



Government of the District of Columbia  
Metropolitan Police Department  
Crime Laboratory

10430 Furnace Road, Suite 105, Lorton, VA 22079 (703) 646-9784

**Amended Report of Examination**

**Hair and Fiber Analysis Report**

This Amended Report of Examination is being issued to correct an error in the Items Submitted and Disposition of Evidence sections. This report will replace M110157, Hair and Fiber Analysis Report dated September 12, 2011.

MCL#	CCN:	PCN:	Laboratory Number
78-16525	1978-344-943	10165634	M110157
Offense:	Victim(s):	Suspect(s):	Incident Date:
Homicide	McCormick, John	Tribble, Shantae	Not provided
Submitting Agency Name and Address:	Submitting Officer:	Submission Dates:	Report Date:
Metropolitan Police Department 3521 V Street, NE Washington, D.C. 20018	Caron, M. J.	August 18, 2011	September 15, 2011

**Item(s) Submitted**

One August 18, 2011, Sergeant Caron delivered the following items to the MPD Laboratory:

One tape sealed property envelope labeled "MCLU 78-16525 ... CCN: 1978344943 ..." contained the following:

One paper envelope labeled "J5883 ...";

One tape sealed zip lock bag containing one striped shirt (item #14);

One small closed zip lock bag labeled "78-16525" (item #13);

Seven closed double cardboard slide mailers containing twelve glass microscope slides from FBI item numbers Q2 (one slide), Q5 (two slides), Q6 (two slides), Q7 (two slides), K1 (one slide), K2 (two slides), and K4 (two slides).

**Requested Analysis**

Conduct appropriate hair examinations with the submitted evidence.

**Results and Conclusions**

The Q2 glass microscope slide contained 13 hairs. Most of these hairs are short head hairs, short limb type hairs and short hair fragments, some of which exhibit Negroid characteristics. These hairs range in length from approximately 1/8 inch to 1 inch and are of no value for meaningful microscopical comparison purposes. One of the hairs is probably the distal end of a head hair fragment that exhibits Caucasian characteristics. The racial origin of some of these hairs could not be determined. In addition, there was one head hair fragment that exhibits Negroid characteristics and is approximately 1/2 inch in length.

22 AL 9/22/11

5X-78  
9/16/11

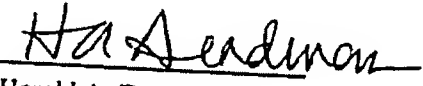
None of the above hairs are suitable for nuclear DNA analysis; however, it is possible that mitochondrial DNA can be obtained from many of the above hairs.

No hair and fiber examinations were conducted with the other submitted evidence.

*This report contains opinions and/or interpretations of the forensic scientist who prepared the report.*

**Disposition of Evidence**

One paper envelope labeled "J5883", the closed zip lock bag containing one striped shirt (item ++14), the small closed zip lock bag labeled "78-16525" (item 13) and the seven closed double cardboard slide mailers containing twelve glass microscope slides from FBI item numbers Q2 (one slide), Q5 (two slides), Q6 (two slides), Q7 (two slides), K1 (one slide), K2 (two slides), and K4 (two slides) were returned to evidence storage on September 9, 2011.

  
Harold A. Deadman  
Forensic Scientist IV



## EXHIBIT 7

EVIDENCE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C.

EVIDENCE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C.

EVIDENCE

EVIDENCE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C.

EVIDENCE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C.

## EXHIBIT 8



*Government of the District of Columbia  
Metropolitan Police Department  
Crime Laboratory*

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10430 Furnace Road, Suite 105, Lorton, VA 22079 (703) 646-9784 FAX (703) 646-9761

**TO:** Dr. Terry Melton  
Mitotyping Technologies, LLC  
2565 Park Center Blvd.  
Suite 200  
State College, Pa 16801

**FROM:** Harold Deadman, Forensic Examiner, Metropolitan Police Dept. Crime Laboratory

**DATE:** October 3, 2011

**RE:** Mitochondrial DNA testing

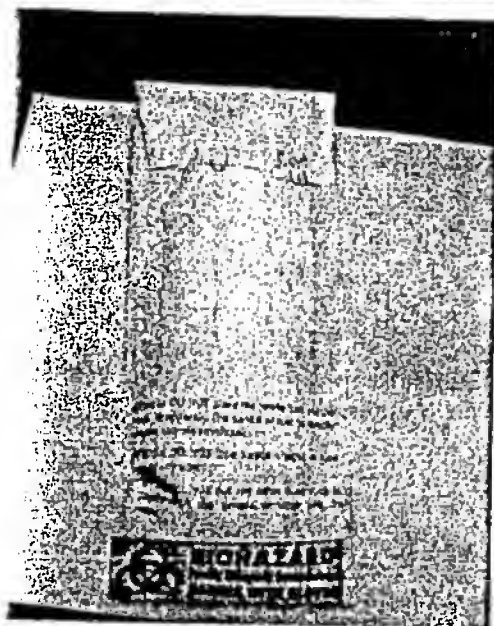
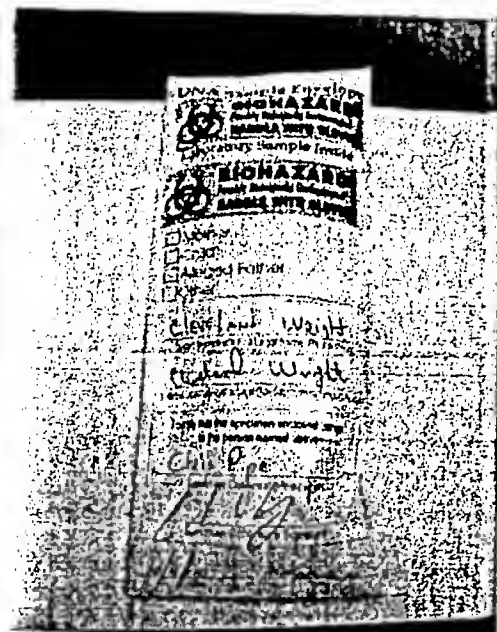
Enclosed for mitochondrial analysis are 13 human hairs. Each hair is on a glass microscope slide under a cover slip which has been taped to the slide. There is no mounting medium present. The slides are numbered 1 through 13. The glass microscope slides have been placed in labeled cardboard mailers. These hairs were removed from a slide in which the hairs were mounted in Permout in 1978. After removal each hair was washed with xylene. Most of the hairs are very short (approximately 3 to 7 millimeters in length). Most of the hairs have a telogen root (except for hairs #3, #4, #12 and #13 which are hair fragments). In addition, hair #3 is approximately 1 inch in length. Hair number #13 is approximately 1/2 inch in length.

These hairs are being sent at the request of Sandra Levick, D. C. Public Defenders Service ([SLevick@PDSDC.ORG](mailto:SLevick@PDSDC.ORG), 202-628-1200) and Tim Lucas, Washington D.C., United States Attorney's Office. ([Timothy.W.Lucas@usdoj.gov](mailto:Timothy.W.Lucas@usdoj.gov), (202-252-6744). Contact Sharon Levick for payment information.

Please call me at 703-646-9762 or email me at [harold.deadman@dc.gov](mailto:harold.deadman@dc.gov), if you need any additional information.

## EXHIBIT 9





## EXHIBIT 10



**Report of Laboratory Examination**

October 27, 2011

Sandra Levick  
Public Defender Service  
633 Indiana Avenue NW  
Washington, DC 20004

**SUBJECT:** Cleveland Wright

**ORCHID CELLMARK NO:** M11-0012

**AGENCY CASE NO:** F-4160-78

---

**EXHIBITS**

Client Item	OC Item	Received	Item Description	Screened	PCR
F-4160-78	M11-0012-01	10/12/2011	Buccal Swabs : Right cheek - Cleveland Wright	N	Y
F-4160-78	NOT EXAMINED	10/12/2011	Swab Carton : Left cheek buccal swabs - Cleveland Wright	N	N

**RESULTS**

Mitochondrial DNA (mtDNA) from the indicated exhibit(s) was amplified and sequenced at Hypervariable Regions I and II of the Mitochondrial Control Region. Sequence data are presented as variations from the Revised Cambridge Reference Sequence (rCRS). Bases not specifically listed are consistent with rCRS. The results obtained for each tested sample are listed in Table 1 (see attachment). Due to the maternal inheritance of mtDNA, maternal relatives are expected to share the same mtDNA profile.

**CONCLUSIONS****M11-0012-01.01.1**

A mitochondrial DNA profile was obtained from Cleveland Wright.

**DISPOSITION**

In the absence of specific instruction, evidence will be returned to the submitting agency by Federal Express or another appropriate carrier.

F-4160-78|

M11-0012

1 of 2

## REVIEW

The results described in this report have been reviewed by the following individuals:

Analyst: Romy I. Franco  
Romy I. Franco / DNA Analyst II

Technical  
Reviewer: Barbara L. Leal  
Barbara L. Leal / DNA Analyst II

Procedures used in the analysis of this case adhere to the Quality Assurance Standards for Forensic DNA Testing Laboratories. Orchid Cellmark is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board and Forensic Quality Services-International. The results in this report relate only to the items tested.

cc: Jason Tulley  
Public Defender Service  
633 Indiana Ave. NW  
Washington, DC 20004

October 27, 2011



ORCHID  
CELLMARK

Accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board  
Orlando, FL

F-4160-781

M11-0012

2 of 2

# REPORT OF LABORATORY EXAMINATION

Orchid Cellmark Dallas

October 27, 2011

ORCHID CELLMARK CASE NO: M11-0012

AGENCY CASE NO: F-4160-78

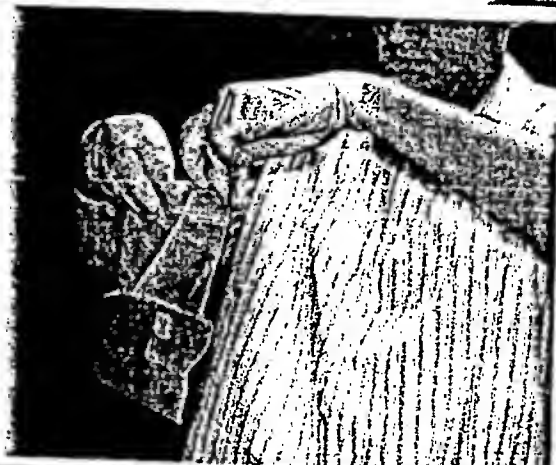
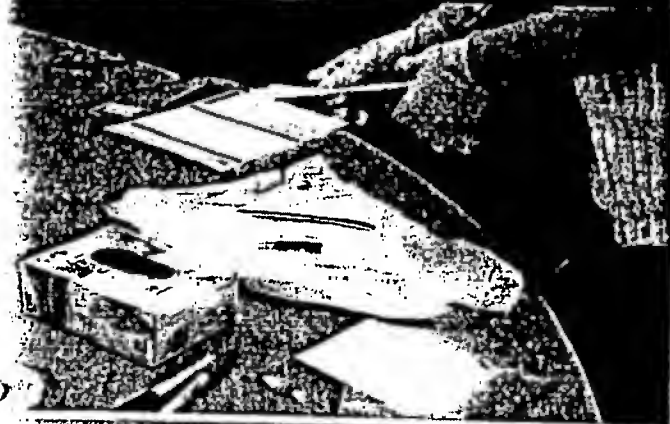
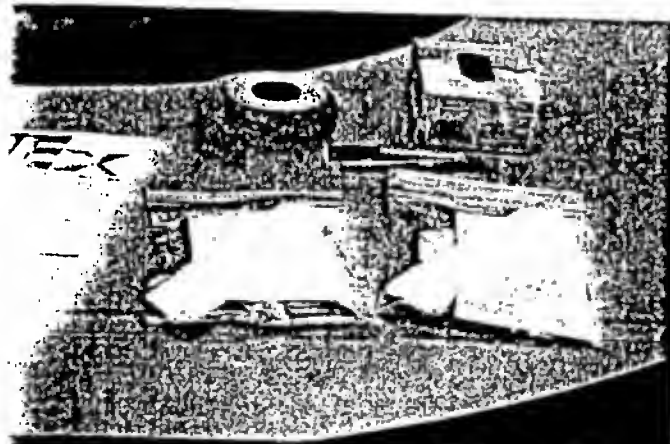
Table 1: Mitochondrial Sequence Data

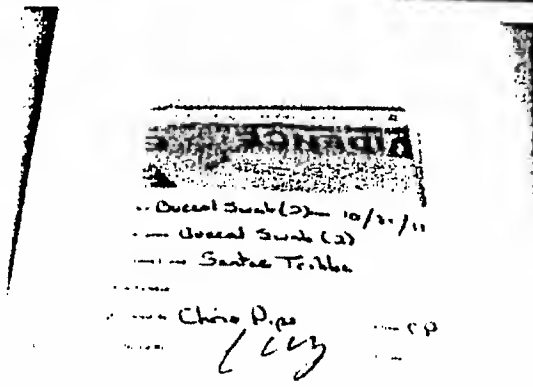
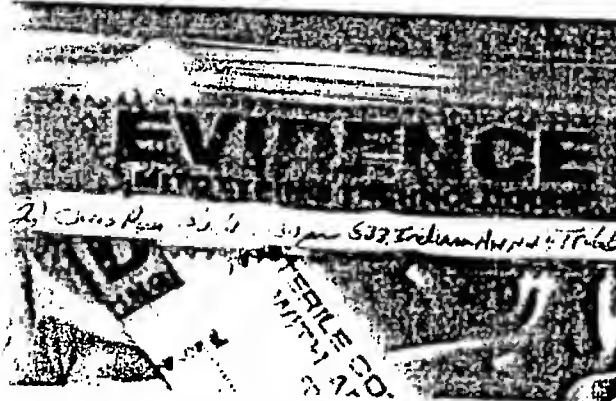
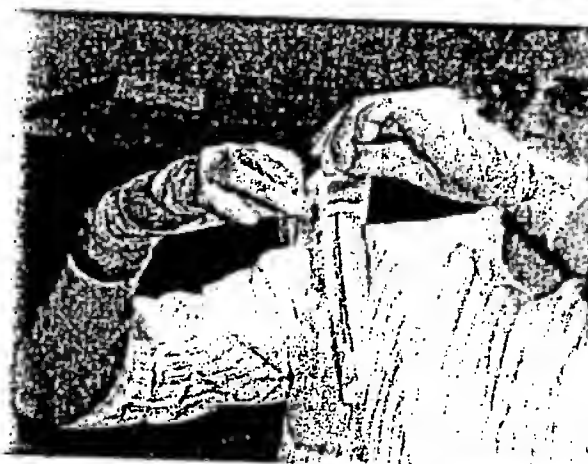
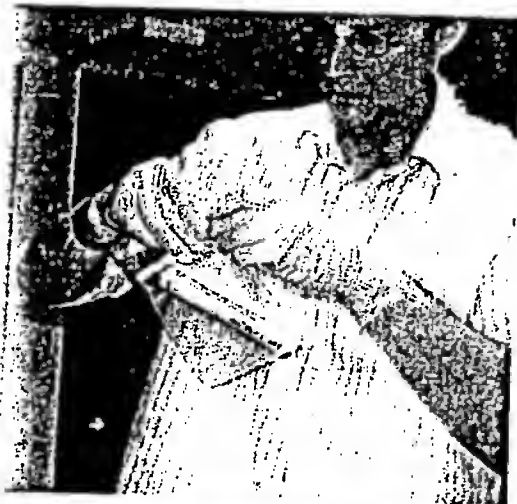
HVI (16024-16365)				
Specimen #	16185	16223	16311	16327
M11-0012-01.01.1	T	T	C	T
rCRS	C	C	T	C

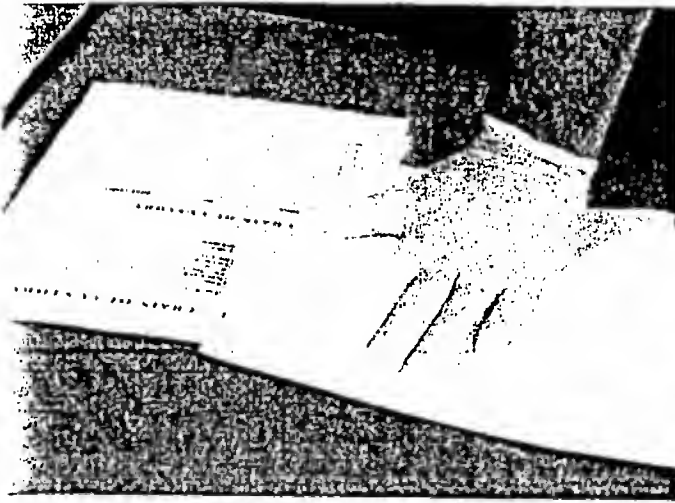
HVII (73-340)							
Specimen #	73	150	185	189	263	309.1	315.1
M11-0012-01.01.1	G	T	A	G	G	C*	C*
rCRS	A	C	G	A	A	-	-

- (no base present at this position) \*(present in the major mitochondrial DNA species)

## EXHIBIT 11







**MITOTYPING TECHNOLOGIES**  
FORENSIC MITOCHONDRIAL • STR DNA ANALYSIS  
IDENTIFICATION DOCUMENT

Sample # \_\_\_\_\_  
Case # \_\_\_\_\_  
Date of collection \_\_\_\_\_

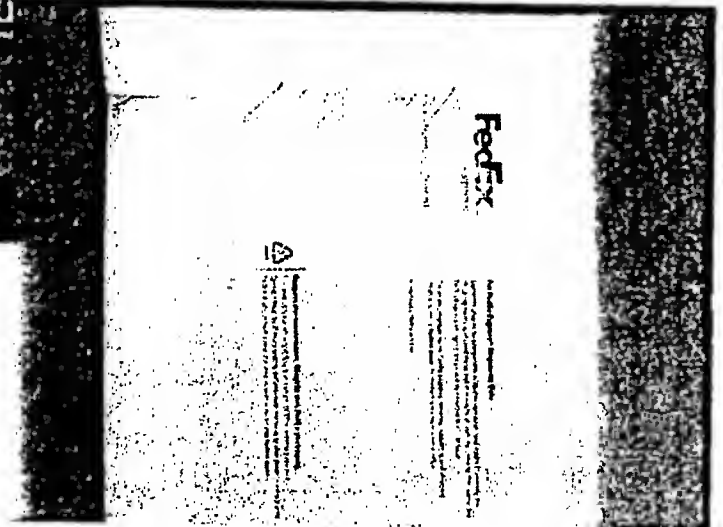
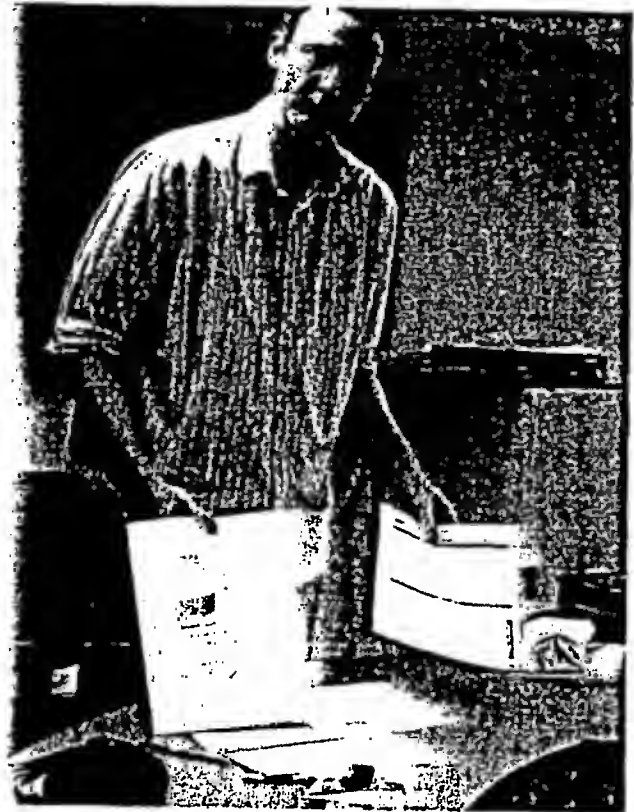
This document is a report of the results of the analysis of the sample(s) submitted to Mitotyping Technologies, Inc. for forensic mitochondrial and STR DNA analysis. The results are based on the analysis of the sample(s) submitted to Mitotyping Technologies, Inc. for forensic mitochondrial and STR DNA analysis. The results are based on the analysis of the sample(s) submitted to Mitotyping Technologies, Inc. for forensic mitochondrial and STR DNA analysis.

Identified as \_\_\_\_\_  
Sample # \_\_\_\_\_  
Case # \_\_\_\_\_  
Date of collection \_\_\_\_\_

**CHAIN OF CUSTODY**

To be completed by sample collector at collection site

I hereby certify that I have drawn blood samples or collected a saliva/cheek swab from the person



## EXHIBIT 12



AFFIDAVIT OF ACTUAL INNOCENCE OF SANTAE A. TRIBBLE

I, Santae A. Tribble, declare under penalty of perjury that I am actually innocent of the crime of felony murder and armed robbery of John McCormick that is the subject of the attached motion. I further declare under penalty of perjury that the new evidence set forth in the attached motion "was not deliberately withheld by [me] for purposes of strategic advantage." See D.C. Code § 22-4135 (d)(1).

Santae A. Tribble  
Santae A. Tribble

Date: January 17, 2012

District of Columbia: SS

Subscribed and Sworn to before me,

this 17th day of Jan, 2012

Glenetta M. Harris  
Notary Public, D.C.

My commission expires 4/14/2012

Glenetta M. Harris  
Notary Public, District of Columbia  
My Commission Expires 4/14/2012

## EXHIBIT 13

## AFFIDAVIT OF JAMES E. TRIBBLE

My name is James Eddie Tribble. I am Santae Tribble's older brother. I was born in June 1954. I am 7 years older than Santae, who was born in April 1961.

I am a veteran of the United States Army, and currently work at the Defense Threat Reduction Agency at Ft. Belvoir as a printer. I currently reside in Woodbridge, Virginia with my wife. I have two grown daughters. I am an active member of the First Mt. Zion Baptist Church in Dumphries, Virginia, where I am a member of the men's choir and the mass choir.

In October 1971, when I was 17 years old, I enlisted. I served in the Army through May 1977, rising to the rank of E-5. For some of those years I was stationed in Alaska. For others, I was assigned to Ft. Meade or Ft. Belvoir.

I testified at my brother's trial. I do not recall the details of my testimony, but I know that I told the truth. I remain as certain today of my brother's innocence as I was when I first heard of the charges against him.

Ms. Levick has shown me a letter from the trial files dated December 24, 1978, addressed to Judge Wagner. Although I do not remember writing it, I recognize my handwriting, my signature, and the contents of the letter and know that it is one that I wrote. It states in part:

Dear Judge Wagner,

I am writing this letter on behalf of Santae A. Tribble, as well as myself. I feel that I am qualified to do so because I've been both an older brother as well as father to him, since our father left home some thirteen years ago. I know Santae very well to say the least. He often confides in me or asks for my advice. I know him well enough to know for sure, that he is not the type of person some would have this court believe he is.

Without going into details, I would like for this court to know that at the time and date of one of the two crimes Santae is now accused of, he was with me along with two other persons. As far as the other case is concerned, I can only go by what I've said

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earlier, "I know Santae." I have looked him in his eyes and he into mine and I have asked him about what happened and he has told me that he knows nothing about it at all. And I'm satisfied that he doesn't.

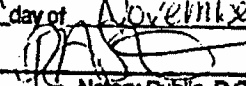
Our entire family is assured and confident that Santae's innocence will be proved in a court of law. However, we are all afraid of his spending more time in jail for a crime he did not commit.

The other two people that I was referring to in this letter that were with me and Santae when the second crime was committed were Santae's girlfriend and our friend Dara. My mother Dorothy Tribble had asked me to come home to Seat Pleasant, Maryland to look after our grandfather while she was on vacation. She had also asked Santae to do the same. At the time I was working at Ginn's Office Warehouse on Kilner Place, in Bladenburg, Maryland. I would wake up very early to walk to work. I know that Santae and his girlfriend were awake, in the apartment, when I went to sleep, and that they were asleep in the living room when I left to go to work on the morning the cab driver was murdered in the District of Columbia.

Ms. Levick has shown me a time sheet contained in the trial files. That was my time sheet from Ginn's. It shows I clocked in on Wednesday, July 26, 1978, at 6:57. I clocked out at 3:00 pm. In April, 2010, I drove with Ms. Levick and her investigator from where Ginn's used to be on Kilner Place to my mother's former apartment at 6810 Seat Pleasant Drive. The distance is approximately 4 miles. I would have thought it was longer.

I was shocked that Santae was convicted. His conviction was a terrible hardship to him and to our entire family, and a terrible injustice.

I swear, under penalty of perjury, that the foregoing 2-page statement is true to the best of my knowledge.

Subscribed and sworn to before me, in my presence,  
this 11<sup>th</sup> day of November, 2011  
  
Notary Public, D.C.  
My commission expires \_\_\_\_\_

PATRICIA A. SLATER  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires September 30, 2013

## EXHIBIT 14

NAME *J. G. Tuttle* #169  
 DEPARTMENT *10302* PAY ENDING *7.23.78*

TYPE	THIS	NEXT	TOTAL
Regular	30		
Overtime			
Holiday			
Vacation			
Sick			
TOTAL	30		

AUTHORIZATION *[Signature]*

			REG. TIME HRS.	OVERTIME HRS.
<div style="border: 1px solid black; padding: 5px; width: fit-content;">           PAY SICK PAY            IF BALANCE            ACCRUED <i>0</i> </div>				
FR	P3	:00		
FR	P12	:34	$7\frac{1}{2}$	
FR	P12	:02		
FR	A7	:00		
W	P3	:05		
W	P12	:32	$7\frac{1}{2}$	
W	P12	:04		
W	A6	:57		
TU	P3	:01		
TU	P12	:31	$7\frac{1}{2}$	
TU	P12	:03		
TU	A6	:59		
M	P3	:01		
M	P12	:31	$7\frac{1}{2}$	
M	P12	:00		
TOTALS				

NAME *J. G. Tuttle* #69  
 DEPARTMENT *10302* PAY ENDING *7.30.78*

TYPE	THIS	NEXT	TOTAL
Regular	30		
Overtime			
Holiday			
Vacation			
Sick			
TOTAL	30		

AUTHORIZATION *[Signature]*

			REG. TIME HRS.	OVERTIME HRS.
<div style="border: 1px solid black; padding: 5px; width: fit-content;">           PAY SICK PAY            IF BALANCE            ACCRUED <i>0</i> </div>				
FR	P3	:00		
FR	P12	:31	$7\frac{1}{2}$	
FR	P12	:00		
FR	A7	:01		
TH	P2	:59		
TH	P12	:34	$7\frac{1}{2}$	
TH	P12	:01		
TH	A7	:01		
W	P3	:00		
W	P12	:34	$7\frac{1}{2}$	
W	P12	:00		
W	A6	:57		
TU	P3	:00		
TU	P12	:31	$7\frac{1}{2}$	
TU	P12	:00		
TU	A6	:54		
TOTALS				